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Kansas Pesticide Law

Kansas Statutes Annotated

2-2438a. Definitions. As used in this act, unless the context otherwise requires, the following words and phrases shall have the meanings ascribed to them in this section:

(a) "Animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish and shellfish.

(b) "Department" means the Kansas department of agriculture of the state of Kansas.

(c) "Certified applicator" means any individual who is certified under this act to use or supervise the use of any restricted use pesticide which is classified for restricted use by a certified applicator.

(1) "Certified commercial applicator" means a certified applicator, whether or not a private applicator with respect to some uses, who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided in paragraph (2) of this subsection (c).

(2) "Certified private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of: (A) producing any agricultural commodity, (i) on property owned or rented by such person or such person's employer or, (ii) if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person; or (B) controlling ornamental shrubbery or turf pests on property which is owned or rented by such person and which is used as such person's residence.

(d) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.

(e) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(f) "Equipment" means any ground, water or aerial apparatus, used to apply any pesticide but shall not include any pressurized hand size household apparatus used to apply any pesticide or any equipment, apparatus or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.

(g) "Fungus" means any nonchlorophyll-bearing thallophyte, including, but not limited to, rust, smut, mildew, mold, yeast and bacteria, except those on or in man or other animals and those on or in processed food, beverages or pharmaceuticals.

(h) "General use pesticide" shall mean and include all pesticides which have not been designated, by rule or regulation of the secretary, as being restricted use pesticides.

(i) "Insect" means any small invertebrate animal having the body segmented, belonging to the class insecta and other classes of arthropods, including, but not limited to, beetles, bugs, bees, flies, spiders, mites, ticks and centipedes.

(j) "Registered pest control technician" means an uncertified commercial applicator who applies pesticides for wood destroying pest control, for structural pest control, for ornamental pest control, or for turf pest control, or for any combination of these types of pest control, and who has received verifiable training.

(k) "Nematode" means any unsegmented roundworms of the class nematoda, with elongated, fusiform, or saclike bodies covered with cuticle, inhabiting soil, water, plants or plant parts. Such roundworms may also be referred to as nemas or eelworms.

(l) "Person" means any individual, partnership, association of persons, corporation or governmental agency.

(m) "Pest" means, but is not limited to, any insect, rodent, nematode, fungus, weed or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism, except viruses, bacteria or other microorganisms on or in man or other animals, or which the secretary may declare to be a pest.

(n) "Pesticide" means, but is not limited to, (1) any substance or mixture of substances used to prevent, destroy, control, repel, attract or mitigate any pest and (2) any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant.

(o) "Pesticide business" means any individual, partnership, association of persons or corporation which applies pesticides to the property of another for compensation.

(p) "Pesticide business licensee" shall mean an individual, business, association of persons or corporation who is licensed or would be required to be licensed under the provisions of K.S.A. 2-2440, and amendments thereto.

(q) "Pesticide dealer" means any person who sells a pesticide to another person for application.

(r) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of plants but shall not include substances insofar as they are used as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments. The term "plant regulator" shall not include any such nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health and propagation of plants, and not for pest destruction if such mixtures or soil amendments, in the undiluted packaged concentration are nontoxic and nonpoisonous.

(s) "Restricted use pesticide" shall mean and include all pesticide uses designated as such by rules and regulations of the secretary or the board.

(t) "Secretary" means the secretary of agriculture.

(u) "Under the supervision of" means, unless otherwise provided by the labeling of the pesticide product, acting under the instructions and control of another person who is available if and when needed, even though such other person is not physically present at the time and place the act is done.

(v) "Weed" means any plant or part thereof which grows where not wanted.

(w) "Use of any pesticide in a manner inconsistent with its label or labeling" means to use any pesticide in a manner not permitted by the label or labeling.

(x) "Pest control" means the destruction, prevention, repulsion or mitigation of a population, infection or infestation of a pest.

(y) "Pesticide management area" means a site or area designated by the secretary pursuant to K.S.A. 2-2472, and amendments thereto, within which a pesticide management plan is deemed necessary for the protection of the public health, safety, welfare or natural resources of the state.

(z) "Natural resources" means and includes soils, water and any form of terrestrial or aquatic or animal life.

(aa) "Pesticide rinsate" means the water contaminated with pesticides from the cleaning of the inside of pesticide containers or pesticide tanks.

2-2439. Administration of act; rules and regulations. The secretary is hereby authorized and empowered to administer and enforce the provisions of this act. The secretary is authorized to promulgate rules and regulations designating certain pesticides as restricted use pesticides.

The secretary shall have the authority, by rules and regulations, to make any additional changes in the classification of restricted use pesticides.

2-2440. Unlawful acts; pesticide business license, requirements and fees, exemptions; government agency registration, exemptions; license and registration renewals. (a) Subject to the provisions of subsection (d), it is unlawful for any pesticide business which has not been issued a pesticide business license to:

(1) Advertise, offer for sale, sell or perform any service for the control of a pest on the property of another or apply a pesticide to the property of another within this state; or

(2) perform any service for the control of a pest or apply any pesticide on or at the premises of another person under any commission, division of receipts or subcontracting arrangement with a licensed pesticide business.

Nothing in this subsection shall be construed to require the licensing of any person applying restricted use pesticides to the property of another as a certified private applicator or under the supervision of a certified private applicator.

(b) Application for a pesticide business license or renewal shall be made in writing to the secretary on a designated form obtained from the secretary's office and shall be accompanied by an application fee per category in which the licensee applies, and an additional fee for each uncertified individual employed by the applicant to apply pesticides.

The application fee per category shall be \$112, or commencing July 1, 2002, and ending June 30, 2010, the application fee per category shall be \$140 per category in which the licensee applies. An additional fee of \$10, or commencing July 1, 2002, and ending June 30, 2010, an additional fee of \$15 shall be paid for each uncertified individual employed by the applicant to apply pesticides. The application fee per category and the additional fee for each uncertified employee in effect on the day preceding the effective date of this act shall continue in effect until the secretary of agriculture adopts rules and regulations fixing a different fee under this subsection. Any uncertified individual employed for a period of more than 10 days in a 30-day period or for five consecutive days by a licensee to apply pesticides subsequent to such application shall be reported to the secretary within 30 days of such employee's hiring and the fee shall be paid at that time. Each application shall also include the following:

- (1) The business name of the person applying for such license or renewal;
- (2) if the applicant is an individual, receiver, trustee, representative, agent, firm, partnership, association, corporation or other organized group of persons, whether or not incorporated, the full name of each owner of the firm or partnership or the names of the officers of the association, corporation or group;
- (3) the principal business address of the applicant in the state and elsewhere; and
- (4) any other information the secretary, by rules and regulations, deems necessary for the administration of this act.

(c) The secretary may issue a pesticide business license to apply pesticides in categories for which an applicant has applied if the applicant files the bond, insurance, letter of credit or proof of an escrow account as required under K.S.A. 2-2448 and amendments thereto, satisfies the requirements of subsection (b), and pays the required fees. Such license shall expire at the end of the calendar year for which it is issued unless it has been revoked or suspended prior thereto. If a license is not issued as applied for, the secretary shall inform the applicant in writing of the reasons therefor.

- (d) The following persons shall be exempted from the licensing requirements of this act:
- (1) State or federal personnel using pesticides or pest control services while engaged in pesticide use research;
 - (2) veterinarians or physicians using pesticides as a part of their professional services; and
 - (3) any person or such person's employee who applies pesticides on or at premises owned, leased or operated by such person.

(e) Subject to the provisions of subsection (d), it is unlawful for any governmental agency which has not been issued a government agency registration to apply pesticides within this state. Application for government agency registration shall be made in writing to the secretary on a designated form obtained from the secretary's office and shall be accompanied by a fee fixed by rules and regulations adopted by the secretary of agriculture, except that such fee shall not exceed \$35, or commencing July 1, 2002, and ending June 30, 2010, such fee shall not exceed \$50. The governmental agency registration fee in effect on the day preceding the effective date of this act shall continue in effect until the secretary of agriculture adopts rules and regulations fixing a different fee therefor under this subsection. No fee shall be required of any township located within a county which has previously applied for and received government agency registration. Each application for registration shall contain information including, but not limited to:

- (1) The name of the government agency;
- (2) the mailing address of the applicant;
- (3) the name and mailing address of the person who heads such agency and who is authorized to receive correspondence and legal papers. Such person shall be (A) The mayor or city manager for municipalities; (B) the chairperson of the board of county commissioners for counties; (C) the township trustee for townships; or (D) any person designated by any other governmental agency; and
- (4) any other information the secretary, by rules and regulations, deems necessary for the administration of this act.

(f) If the secretary finds the application to be sufficient, the secretary shall issue a government agency registration. The government agency is not required to furnish a surety bond under this act. Such government agency registration shall expire at the end of the calendar year for which it is issued unless it has been revoked or suspended prior thereto. If a registration is not issued as applied for, the secretary shall inform the applicant in writing of the reasons therefor.

(g) A pesticide business license or government agency registration may be renewed by meeting the same requirements as for a new license or registration. Neither the pesticide business license nor the government agency registration shall be transferable, except that, in the event of the disability, incapacity or death of the owner, manager or legal agent of a pesticide business licensee, a permit may be issued by the secretary to permit the operation of such business until the expiration period of the license in effect at the time of such disability, incapacity or death if the applicant therefor can show that the policies and services of such business will continue substantially as before, with due regard to protection of the public and the environment.

(h) No pesticide business license may be issued to any person until such person is or has in such person's employ one or more individuals who are certified commercial applicators in each of the categories for which the license application is made.

2-2440a. Pesticide business licensee requirements. (a) A pesticide business licensee applying pesticides for the control

of wood destroying pests, structural pests, ornamental pests or turf pests shall ensure that registered pest control technicians who handle, mix or apply pesticides have been trained as provided in this act. The pesticide business licensee shall notify the secretary by the 10th of the month following the date of employment of the employment of a registered pest control technician or a person to be trained as a registered pest control technician. The pesticide business licensee shall ensure that all persons employed by the pesticide business who apply pesticides and who are not registered pest control technicians meet the requirements of this act within 90 days after they are employed. This requirement shall not apply to certified commercial applicators employed by the pesticide business licensee.

(b) This section shall be part of and supplemental to the Kansas pesticide law.

2-2440b. Unlawful acts; pest control technician registration, requirements and fees. (a) It shall be unlawful for any pesticide business licensee to apply pesticides for the control of wood destroying pests, structural pests, ornamental pests or turf pests unless the applicator of the pesticide is a certified commercial applicator or is a registered pest control technician, except that an uncertified commercial applicator may apply pesticides when either a certified applicator or registered pest control technician is physically present.

(b) Any such employee applying for a pest control technician registration shall file an application on a form prescribed by the secretary. Application for such registration shall be accompanied by an application fee established by rules and regulations adopted by the secretary, except that such fee shall not exceed \$25, or commencing July 1, 2002, and ending June 30, 2010, such fee shall not exceed \$40 and shall be reduced, but not below zero, by an amount equal to the additional fee paid under subsection (b) of K.S.A. 2-2440 and amendments thereto for such uncertified individual.

(c) If the secretary finds the applicant qualified to be a registered pest control technician after meeting the training requirements determined by the secretary in rules and regulations, the secretary shall issue a pest control technician registration which will expire at the end of the calendar year.

(d) This section shall be part of and supplemental to the Kansas pesticide law.

2-2440c. Registered pest control technician; training; approval of training materials; maintenance of records verifying training. (a) Each registered pest control technician shall have received training, to the extent prescribed by the secretary by rules and regulations in each of the subjects enumerated in K.S.A. 2-2443a, and amendments thereto.

(b) Within 90 days after the effective date of this act, each pesticide business licensee who applies pesticides or causes pesticides to be applied for the control of wood destroying pests, structural pests, ornamental pests or turf pests shall submit its training materials to the secretary for approval. After initial approval, each such pesticide business licensee shall resubmit its training materials for approval every five years. Training materials submitted to the secretary shall be approved or disapproved within 60 days of the date of receipt by the secretary. If the training materials submitted are disapproved, the secretary shall provide the pesticide business licensee within 60 days of receipt of the training materials a written explanation of the reasons for such disapproval.

(c) Each pesticide business licensee who applies pesticides or causes pesticides to be applied for the control of wood destroying pests, structural pests, ornamental pests or turf pests shall maintain records to verify that each registered pest control technician employed by such pesticide business licensee has been properly trained. These records shall contain the name of each person who takes the training to become a registered pest control technician, the date or dates of such training, the date the training was completed and any other information required by the secretary. These records shall be maintained for a period of three years after the training has been given. These records shall be made available to the secretary or the secretary's authorized designee upon request.

(d) This section shall be part of and supplemental to the Kansas pesticide law.

2-2440d. Same; fees. (a) The fee for registration of each registered pest control technician shall be paid by the pesticide business licensee employing the registered pest control technician. The registration shall inure to the benefit of the pesticide business licensee and shall not be transferable.

(b) This section shall take effect and be in force from and after January 1, 1988.

2-2440e. Pesticide business licensee; civil penalties; appeal procedure; deposit of moneys. (a) Any pesticide business licensee who violates any of the provisions of K.S.A. 2-2453 or 2-2454 and amendments thereto, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (b) in the amount fixed by rules and regulations of the secretary in an amount not less than \$100 nor more than \$5,000 for each violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) A duly authorized agent of the secretary, upon a finding that a pesticide business licensee or any employee or agent thereof or any person or entity required to be licensed as a pesticide business licensee who violates any of the provisions of K.S.A. 2-2453 and 2-2454, and amendments thereto, may impose a civil penalty as provided in this section upon such licensee.

(c) No civil penalty shall be imposed pursuant to this section except upon the written order of the duly authorized agent of the secretary to the pesticide business licensee who committed the violation. Such order shall state the violation,

the penalty to be imposed and the right of such pesticide business licensee to appeal to the secretary. Any such licensee, within 20 days after notification, may make written request to the secretary for a hearing or informal conference hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(d) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the act for judicial review and civil enforcement of agency actions.

(e) Any civil penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer; upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(f) This section shall be a part of and supplemental to the Kansas pesticide law.

2-2441a. Commercial applicator's certificate; exemptions; application and fees; expiration. No individual except the following shall use any restricted use pesticide without a commercial applicator's certificate issued by the secretary:

(a) Individuals applying restricted use pesticides under a private applicator certification;

(b) employees of a pesticide business licensee using only nonaerial methods of applying pesticides and who work only under the supervision of a certified commercial applicator. The secretary may authorize any certified aerial applicator to apply restricted use pesticides in a category other than one in which such applicator is certified under the supervision of an applicator certified in the category in which the pesticide is being applied during an emergency situation declared by the secretary with the consent of the governor;

(c) veterinarians or physicians using pesticides as a part of their professional services;

(d) qualified laboratory personnel employed by recognized pesticide research facilities, using pesticides or pest control services while engaged in pesticide use research; and

(e) federal employees using pesticides as a part of their employment by a federal agency which has its own certification program which is the full equivalent of the requirements of this state.

Such a commercial applicator's certificate shall be required in addition to any other license or permit required by law for the operation or use of pesticide application equipment. Any person applying for such commercial applicator's certificate shall file an application on a form prescribed by the secretary. Application for a certificate to apply pesticides shall be accompanied by an application fee per category in which the applicant applies which fee is fixed by rules and regulations adopted by the secretary of agriculture, except that such fee shall not exceed \$35, or commencing July 1, 2002, and ending June 30, 2010, such application fee shall not exceed \$50 per category in which the applicant applies. The commercial applicator's certificate fee in effect on the day preceding the effective date of this act shall continue in effect until the secretary of agriculture adopts rules and regulations fixing a different fee therefor under this section. If the secretary finds the applicant qualified to apply pesticides in the categories the applicant has applied for after examinations on the same basis as provided for in K.S.A. 2-2443a and amendments thereto, the secretary shall issue a commercial applicator's certificate limited to the categories for which the applicant is qualified, which certificate shall expire at the end of the second calendar year after the year of issue. If a certificate is not issued as applied for, the secretary shall inform the applicant in writing of the reasons for such denial.

2-2442. Same; temporary permit; examination. (a) Any person required to obtain a commercial applicator's certification may apply for a temporary permit. The temporary permit may be used in lieu of the regular certification, described in K.S.A. 1976 Supp. 2-2441, until the person is scheduled for regular examination. In no event will the period of time for use of a temporary permit exceed sixty (60) days and a second temporary permit for the same category cannot be issued to the same person during the calendar year within which such temporary permit was issued.

(b) Temporary permits may be issued to persons who have:

(1) Completed application on a form prescribed by the secretary;

(2) paid the fees prescribed in K.S.A. 1976 Supp. 2-2441; and

(3) passed an emergency examination provided to each county extension office by the secretary.

(c) The county extension agent shall make available emergency examinations and give and grade such examinations. The county clerk will be responsible for issuing the temporary permits, collecting the fees and forwarding the fees with necessary informational records to the secretary.

2-2443a. Same; examination; reciprocity; fees; subjects included in examination. An applicant for a commercial applicator's certificate shall show upon written examination that the applicant possesses adequate knowledge concerning the proper use and application of pesticides in the categories for which the applicant has applied. Upon the recommendation of the secretary, a commercial applicator who holds a current certificate to apply pesticides commercially in any other state or political subdivision of the United States may be exempted from examination for certification in this state upon payment of proper fees. Such fees shall not be less than any comparable fees charged by the commercial applicator's state to Kansas certificate holders, if such state or political subdivision's requirements for certification were the full equivalent of the requirements of this state at the time it was issued and if the proper authorities of the state from

which the applicant holds such commercial applicator's certificate, or its equivalent, agree to accept on an equal basis holders of certificates issued by the authorities of this state.

Applicants shall submit with each application an examination fee per category in which the applicant is to be examined which fee is fixed by rules and regulations adopted by the secretary of agriculture, except that such fee shall not exceed \$25, or commencing July 1, 2002, and ending June 30, 2010, such fee shall not exceed \$35 per category in which the applicant is to be examined. The examination fee in effect on the day preceding the effective date of this act shall continue in effect until the secretary of agriculture adopts rules and regulations fixing a different fee therefor under this section. Applicants who fail to pass the examination may reapply and take another examination upon paying another examination fee per category in which the applicant is to be reexamined which fee is fixed by rules and regulations adopted by the secretary of agriculture, except that such fee shall not exceed \$25, or commencing July 1, 2002, and ending June 30, 2010, such fee shall not exceed \$35 per category in which the applicant is to be reexamined. The reexamination fee in effect on the day preceding the effective date of this act shall continue in effect until the secretary of agriculture adopts rules and regulations fixing a different fee therefor under this section. The examination shall include, but is not limited to, the following:

- (a) The proper use of the equipment.
- (b) The hazards that may be involved in applying the pesticides, including:
 - (1) The effect of drift of the pesticides on adjacent and nearby lands and other non-target organisms;
 - (2) the proper meteorological conditions for the application of pesticides and the precautions to be taken with such application;
 - (3) the effect of the pesticides on plants or animals in the area, including the possibility of damage to plants or animals or the possibility of illegal pesticide residues resulting on them;
 - (4) the effect of the application of pesticides to wildlife in the area, including aquatic life;
 - (5) the identity and classification of pesticides used and the effects of their application in particular circumstances;
- and
- (6) the likelihood of contamination of water or injury to persons, plants, livestock, pollinating insects and vegetation.
- (c) Calculating the concentration of pesticides to be used.
- (d) Identification of common pests to be controlled and damages caused by such pests.
- (e) Protective clothing and respiratory equipment for handling and application of pesticides.
- (f) General precautions to be followed in the disposal of containers as well as the cleaning and decontamination of the equipment which the applicant proposes to use.
- (g) Applicable state and federal pesticide laws and regulations.
- (h) Any other subject which the secretary deems necessary.

2-2444a. Categories of qualification for certification and licensing; subdivision by secretary. (a) The categories of qualification for certification and licensing shall include:

- (1) Agricultural pest control;
 - (2) forest pest control;
 - (3) ornamental and turf pest control;
 - (4) seed treatment;
 - (5) aquatic pest control;
 - (6) right-of-way pest control;
 - (7) industrial, institutional, structural and health related pest control;
 - (8) public health pest control;
 - (9) regulatory pest control; and
 - (10) demonstration and research pest control.
- (b) The secretary shall have authority to subdivide any category of qualification for certification or licensing enumerated in subsection (a) of this section in order to account for the special needs or business practices of this state. The secretary may also adopt any additional categories he or she deems necessary for any reason. Any such changes in the categories enumerated in subsection (a) shall be adopted by rules and regulations of the secretary.

2-2445a. Certified private applicator's certificate; qualifications; examination; fee; educational materials; reciprocity of certificates. In lieu of obtaining a commercial applicator's certificate under the provisions of K.S.A. 2-2441a and amendments thereto, a private applicator's certificate may be applied for by and issued to individuals using restricted use pesticides for the purpose of: (a) Producing any agricultural commodity on property owned or rented by the individual or such individual's employer, or on the property of another for no compensation other than the trading of personal services between producers; or (b) controlling ornamental shrubbery or turf pests on property owned or rented by the individual and such property is used as the individual's residence. Such certificates shall expire on the anniversary of the individual's date of birth occurring in the fifth calendar year following the year of issue. No certification shall be

required hereunder for individuals operating under the supervision of a certified private applicator.

Certified private applicator certificates may be issued to individuals who have paid: (a) A fee fixed by rules and regulations adopted by the secretary of agriculture, except that such fee shall not exceed \$10, or commencing July 1, 2002, and ending June 30, 2010, such fee shall not exceed \$25; and (b) who have acquired practical knowledge of pest problems, proper storage, use, handling and disposal of pesticides and pesticide containers, pertinent information found on the pesticide labels, pesticide use safety and environmental considerations, either through Kansas state university extension service educational training or through individual study of educational materials available at county extension offices or the secretary of agriculture. The certified private applicator certificate fee in effect on the day preceding the effective date of this act shall continue in effect until the secretary of agriculture adopts rules and regulations fixing a different fee therefor under this section. Individuals shall indicate adequate knowledge of the subjects enumerated herein by passing an open-book examination approved by the secretary.

Educational materials and examination blanks shall be made available at county extension offices and at places where extension educational training is conducted. The examinations shall be scored by members of the extension or secretary's staff. If an individual passes the examination by equaling or exceeding a standard authorized by the secretary, a certified private applicator's certificate shall be issued to such individual. Such staff member shall send a copy of the certificate issued, together with the fee, to the secretary.

Upon the recommendation of the secretary, a certified applicator who holds a current certificate to apply pesticides as a certified private applicator in any other state or political subdivision of the United States may be exempted from examination for private applicator certification in this state upon payment of proper fees. Such fees shall not be less than any comparable fees charged by the certified private applicator's state to Kansas certificate holders, if such state or political subdivision's requirements for certification were the full equivalent of the requirements of this state at the time it was issued and if the proper authorities of the state from which the applicant holds such certified private applicator's certificate, or its equivalent, agree to accept on an equal basis holders of certificates issued by the authorities of this state.

2-2446. Renewal of certification or registration. (a) A commercial applicator's certification may be renewed for a succeeding three-year period by paying the fees prescribed in K.S.A. 2-2441a, and amendments thereto, passing the examination provided for in K.S.A. 2-2443a, and amendments thereto, and completing the renewal application form prescribed by the secretary. In lieu of such examination, the secretary may accept attendance and satisfactory completion of a training course approved by the secretary.

(b) A private applicator's certification may be renewed for a succeeding five-year period by paying the fee prescribed in K.S.A. 2-2445a, and amendments thereto, passing the examination provided for in K.S.A. 2-2445a, and amendments thereto, and completing the renewal application form prescribed by the secretary. Such examination shall be offered by the board by mail. County extension agricultural meetings shall include pertinent pesticide information for private applicators.

(c) A pest control technician's registration may be renewed for a succeeding one-year period by paying the fees prescribed in K.S.A. 2-2440b, completing the renewal form prescribed by the secretary, and completing any requirements concerning retraining prescribed by rules and regulations.

2-2447. Nonresident applicant for license; consent to action for damages; service of process. Any nonresident applying for a license under this act to operate in the state of Kansas shall file a written irrevocable consent that any action for damages resulting from the application or misapplication of pesticides and any action to enforce the provisions of any contract providing for the application of pesticides, may be commenced against said nonresident in the proper court of any county in this state in which a cause of action may arise or in which the plaintiff may reside; that service of process upon the secretary of the state of Kansas may be had and that such service of process shall be valid and binding to the same extent as if personal service had been had and obtained upon said nonresident in this state.

2-2448. Surety bond, liability insurance, letter of credit or escrow account required for pesticide business license.

(a) Except as provided by subsection (b), the secretary shall not issue a pesticide business license until the applicant has furnished proof of financial responsibility by one of the following:

(1) A surety bond in an amount not less than \$6,000 per year. The bond shall be executed by a corporate surety and shall state the effective date and the expiration date. The surety bond shall be executed on a form approved by the secretary. The applicant shall be named as the principal in the bond. Such bond shall be to the state of Kansas and shall be conditioned upon compliance by the principal and by the principal's officers, agents, representatives and employees, with the provisions of this act and acts amendatory thereof and supplemental thereto. It shall be unlawful for any licensed person to use the words "bond" or "bonded" in advertising or in publicizing such person's operations in connection with the application of pesticides unless such bond is a performance bond and that fact and the amount of such bond are specified.

(2) A certificate of liability insurance. The certificate of liability insurance shall be executed by an insurance company authorized to do business in Kansas or by a licensed insurance agent operating under authority of K.S.A. 40-

246b, and amendments thereto, and shall state the effective date and the expiration date of the policy. Such liability insurance shall be subject to the insurer's policy provisions filed with and approved by the commissioner of insurance pursuant to K.S.A. 40-216, and amendments thereto, except as authorized by K.S.A. 40-246b, and amendments thereto. The liability insurance policy shall provide: (A) Coverage for not less than \$25,000 for bodily injury liability for each occurrence; and (B) coverage for not less than \$5,000 for property damage liability for each occurrence. In addition to the coverage specified above, if the applicant for a pesticide business license is an aerial applicator, the liability insurance policy shall provide coverage for any pesticide such applicant will be applying and for comprehensive chemical coverage. Pesticide application equipment, if required to be registered under K.S.A. 2-2456, and amendments thereto, shall be covered. The insurer shall notify the secretary, in writing, of any expiration, reduction or cancellation of liability insurance, furnished as a prerequisite of licensure, not later than 10 days before the expiration, reduction or cancellation takes effect. Upon expiration, reduction or cancellation of the liability insurance, the secretary shall suspend such pesticide applicator's business license until the insurance requirement is met by the licensee for the current license period. The certificate shall be executed on a form approved by the secretary.

(3) A \$6,000 letter of credit from a Kansas financial institution, as defined in K.S.A. 16-117, and amendments thereto. The letter of credit shall be executed on a form approved by the secretary. The letter of credit shall state the effective date and the expiration date and shall be valid through the term of the applicant's business license. Upon cancellation of the letter of credit, the secretary shall suspend such pesticide applicator's business license until the letter of credit requirement is met by the licensee for the current license period.

(4) Maintaining a minimum balance of \$6,000 in an escrow account in a Kansas financial institution as defined in K.S.A. 16-117, and amendments thereto. The escrow account shall maintain the minimum balance through the term of the applicant's business license. The secretary shall be notified in writing by the financial institution within 10 days if the amount in the escrow account falls below the \$6,000 minimum balance. Upon notification, the secretary shall suspend such pesticide applicator's business license until the escrow account minimum balance is at \$6,000.

(b) Before June 1, 1994, the financial responsibility and proof of financial responsibility required pursuant to this section prior to March 1, 1994, shall continue to apply to any pesticide business holding a valid pesticide business license on February 28, 1994, and no different or additional financial responsibility or proof of financial responsibility shall be required of such business. On or before June 1, 1994, each pesticide business licensed before March 1, 1994, shall furnish to the secretary proof of financial responsibility conforming to the requirements of this section as amended by this act.

(c) The requirements of this section as amended by this act shall apply to any applicant applying for an original pesticide business license on or after March 1, 1994, and no different or additional financial responsibility or proof of financial responsibility shall be required of such applicant.

2-2449. Grounds for denial, suspension, revocation or modification of license. The secretary may deny, suspend, revoke or modify the provisions of any license, registration, permit or certificate issued under this act, if the secretary finds, after notice and hearing, conducted in accordance with the provisions of the Kansas administrative procedure act, that the applicant, licensee, registrant, permit holder or certificate holder has:

(a) Been convicted of or pleaded guilty to a violation of this act, the Kansas pest control act (K.S.A. 2-2401 to 2-2412, and acts amendatory thereof or supplemental thereto) or the Kansas pesticide use law (K.S.A. 2-2413 to 2-2437), or been convicted of or pleaded guilty to a felony under the laws of this state or of the United States, if the board determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust;

(b) failed to comply with any provision or requirement of this act or any rule and regulation adopted thereunder, or any of the laws or rules and regulations of any other state or the United States relating to licensing or other provisions concerning pesticide use or control; or

(c) had any license, certificate, registration or permit issued to the person under this act, the Kansas pest control act (K.S.A. 2-2401 to 2-2412, and acts amendatory thereof or supplemental thereto), the Kansas pesticide use law (K.S.A. 2-2413 to 2-2437) or the pest control or pesticide use laws of any other state revoked.

2-2450. Suspension of license for failure to have surety bond, liability insurance, letter of credit or escrow account. If the surety bond, certificate of liability insurance, letter of credit or proof of an escrow account previously furnished by the licensee expires or is canceled or terminated, the secretary shall suspend without a hearing the license until an acceptable substitute surety bond, letter of credit, proof of an escrow account or certificate establishing acceptable replacement of liability insurance is supplied.

2-2451. Hearing prior to denial, modification, suspension or revocation of license, registration or certification. Before any pesticide business license, governmental registration or an applicator's certificate shall be revoked, denied renewal or modified, or before it shall be suspended for any cause other than termination of surety bond, liability insurance coverage, letter of credit or proof of an escrow account, the secretary shall inform the licensee, registrant or holder of a certificate of the date and place of hearing upon such proposed revocation, denial, modification or suspension. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

2-2452. Appeal of denial, suspension or revocation. The licensee or certificate holder may appeal from the decision and order, in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.

2-2453. Unlawful acts. It shall be unlawful for any person to: (a) Except as provided for in K.S.A. 2-2470, use pesticides in a manner which is inconsistent with such pesticide's label or labeling; or

(b) discard or store any pesticide or pesticide container in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, pollinating insects or waterways and wildlife therein; or

(c) fail to comply with any other provision of this act or any rule or regulation adopted pursuant thereto.

2-2454. Unlawful acts. It shall be unlawful for any person required to be licensed, registered or certified under the provisions of this act to: (a) Make false or fraudulent claims through any media, misrepresenting the effect of material or methods to be utilized

(b) except as provided for in K.S.A. 2-2470, make a pesticide recommendation or use not in accordance with the directions for use shown on the label registered under the Kansas agricultural chemical act or by the environmental protection agency, or both;

(c) knowingly use ineffective or improper methods or materials;

(d) knowingly operate faulty, unsafe or, if registration is required, unregistered equipment, or operate any equipment in a negligent manner;

(e) refuse or neglect to keep and maintain records required by this act, or refuse or neglect to make records available when and as required by this act;

(f) make false or fraudulent records, invoices or reports;

(g) use fraud or misrepresentation in making an application for or renewal of a license, registration, permit or certificate;

(h) refuse or neglect to comply with any limitations or restrictions on or in a duly issued license, registration, permit or certificate;

(i) aid, abet or conspire with any person to evade any of the provisions of this act, or allow a license, registration, permit or certificate to be used by an unlicensed or uncertified person;

(j) impersonate any state, county or city inspector or official, as acting in their official capacity;

(k) make any misrepresentation or defraud any member of the public;

(l) permit a pesticide business license or contract forms to be used by any unlicensed person who is not a salaried or commissioned employee or representative of such licensee, for use in applying pesticides under any commission or subcontracting arrangement;

(m) use any method or material without regard to public health, safety or welfare;

(n) engage in or advertise to provide pest control services without benefit of proper licenses, certification or registration;

(o) use, store, dispose of any pesticide material, pesticide rinsate or container without regard to public health or environmental damage;

(p) fail to maintain and provide a copy of pesticide product labels and material safety data sheets to customers when so requested; or

(q) use any pesticide in a manner inconsistent with limitations imposed by the secretary pursuant to K.S.A. 2-2471.

2-2455. Written statement for services to customer; records, maintenance and availability to secretary. (a) Each pesticide business shall present to each customer for whom such business performs a pest control service involving the application of pesticides a written statement of services or contract setting forth the following information:

(1) Business name and address of the pesticide business licensee;

(2) name and address of the customer;

(3) pest or pests to be controlled, which may be stated in general terms;

(4) pesticide to be used including the quantity applied and total area to which the pesticide is applied;

(5) the concentration or rate of application, when applicable;

(6) the date and location of the application of the pesticide;

(7) the expiration date of all guarantees, if any be given;

(8) the signature of the individual who performed or supervised the performance of the pest control service or the application of pesticides;

(9) the wind direction and velocity, when applicable; and

(10) that the application was less than label rate, when applicable.

(b) Whenever the service involving the application of pesticides is performed for the purpose of controlling termites, powder-post beetles, wood borers, wood-rot fungus or any other wood destroying pest, the following information shall be included in addition to that required under subsection (a): (1) The conditions under which retreatments, if any

are to be made;

(2) the approximate date or dates of inspections, for any to be made after the original application of the pesticide; and

(3) a diagram of the structure to be treated, showing the location of visible evidence of active and inactive infestations by any wood destroying pest or pests for which the treatment is proposed; where a partial or spot treatment is to be made, this diagram shall also show the area or areas of the structure which are to be treated.

(c) The required written statement of services or contract for services involving the application of pesticides may be incorporated into any business form used by the pesticide business licensee. The written statement of services or contract shall be presented to the customer at a time established by rules and regulations promulgated by the secretary or board. Any pesticide business licensee using aerial methods of applying pesticides may present such information at any time prior to the time payment is accepted. The pesticide business licensee shall retain a copy of each written statement of services or contract in such licensee's files for a period of three years from the expiration date of any written statement of services or contract. Each pesticide business licensee shall faithfully carry out the stipulations set forth in any written statement of services or contract prepared by such licensee or any of its representatives.

(d) Each pesticide business licensee shall make available to the secretary upon request, a copy of any written statement of services or contract, records of all pesticide applications during any specified period, records of all employees who performed any service involving, or in conjunction with, the application of pesticides and any other requested information pertinent to the administration of this act or any rule or regulation adopted hereunder by the board.

(e) The secretary shall require certified commercial applicators who are not employed by or otherwise acting for a business licensee to maintain records concerning applications of restricted use pesticides. The secretary shall specify by rules and regulations the information to be contained in such records, which shall be maintained for three years from the date of application of the pesticide concerned. Such records shall be open to inspection by the secretary or the secretary's authorized representative during normal business hours, and copies shall be furnished to the secretary or the secretary's authorized representative upon request.

2-2456. Registration and marking of equipment. (a) The secretary may, at his or her discretion, require the registration of any equipment used in the commercial application of pesticides, and any equipment required to be so registered may be marked for identification in a manner prescribed by the secretary. Unannounced inspections may be made without charge to determine if the equipment is properly calibrated and maintained in conformance with laws and rules and regulations, and the secretary may require repairs or other changes before its further use for pesticide application. A list of requirements that equipment shall meet may be adopted by rules and regulations.

(b) The secretary may, in his or her discretion, require that any car, truck or other vehicle used for the purpose of applying pesticides or transporting pesticide application equipment or personnel to an application site be marked for identification purposes in a location and manner as the secretary shall prescribe: Provided, that such application is for the purpose of controlling pests in the categories of either (1) ornamental and turf pest control, or (2) industrial, institutional, structural and health related pest control.

2-2457a. Statement of claim of damage from pesticide application; filing with secretary; forms; effect of failure to file. (a) Because pesticides have short residual life, a person damaged from pesticide application shall file with [the] secretary, within 60 days after the date the damage was discovered, a written statement, on a form prescribed by the secretary, claiming that the person has been damaged. The statement shall contain, but shall not be limited to, the name of the person responsible for the application of the pesticide, if known, the name of the owner or lessee of the land on which the pesticide was being applied at the time the alleged damage occurred, if known, and the name of the owner or lessee of the land on which it is alleged that the damage occurred.

(b) The secretary shall prepare a form to be furnished to persons for use in such cases and such forms shall contain such other information as the secretary may deem proper. The secretary shall send a duplicate copy of this statement to the person responsible for the application of the pesticide, if known, and to the owner or lessee of the land to which the pesticide was being applied at the time the alleged damage occurred, if known, or other person who may be charged with the responsibility for the alleged damage.

(c) The failure to file a report pursuant to this section:

- (1) Shall create a rebuttable presumption that the alleged damage did not result from the pesticide application;
- (2) shall not preclude the maintenance of any criminal or civil action; and
- (3) shall not constitute a violation of the Kansas pesticide law.

(d) This section shall be part of and supplemental to the Kansas pesticide law.

2-2459a. Courses of instruction. The secretary may, in cooperation with Kansas state university, publish information and conduct short courses of instruction in the safe use and application of pesticides.

2-2460a. Cooperation with other agencies. The secretary may cooperate or enter into formal agreements with any other

agency or educational institution of this state or its subdivisions or with any agency of any other state or of the federal government for the purpose of carrying out the provisions of this act or securing uniformity of regulations.

2-2461. Penalties; injunction. (a) Any person other than a certified private applicator violating or failing to comply with any provision of this act or any authorized rule or regulation of the secretary shall be deemed guilty of a class A misdemeanor. Each separate violation shall constitute a separate offense.

(b) Any certified private applicator who violates any of the provisions of this act or any authorized rules or regulations of the secretary shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$100 and not more than \$500. Each day of operation after notice shall constitute a separate offense.

(c) The district courts of Kansas shall have jurisdiction to restrain violations of this act by injunction without the institution of criminal proceedings. Said injunction shall be issued without bond.

2-2462. Enforcement. For the purposes of carrying out the provisions of this act, the secretary or his or her agent or the county or district attorney or their agents may enter any premises at any reasonable time, in order:

(1) To have access for the purpose of inspecting any equipment subject to this act and such premises on which such equipment is kept or stored; or

(2) to inspect or sample lands and crops actually or reported to be exposed to pesticides; or

(3) to inspect storage or disposal areas; or

(4) to inspect or investigate complaints of injury to humans, crops or land; or

(5) to sample pesticides being applied or to be applied; or

(6) to observe the use and application of a pesticide.

Should the secretary, his or her agent or the county or district attorney or their agents be denied access to any land where such access was sought for the purposes authorized, the secretary or the county or district attorney may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for said purposes. The court may upon such application, issue the search warrant for the purposes requested.

The enforcement of the criminal provisions of this act shall be the duty of, and shall be implemented by, the county or district attorneys of the various counties or districts. In the event a county or district attorney refuses to act, the attorney general shall so act. The secretary is charged with the duty of enforcing all other provisions of this act.

2-2463. Subpoenas. The secretary may issue subpoenas to compel the attendance of witnesses and/or production of books, documents and records anywhere in the state in any hearing affecting the authority or privilege granted by a license, registration, certificate or permit issued under the provisions of this act.

2-2464a. Disposition of moneys; pesticide use fee fund, laboratory equipment fund. The secretary shall remit all moneys received by or for the secretary under this act and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the pesticide use fee fund. All expenditures from the pesticide use fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of agriculture or by a person or persons designated by such secretary.

2-2465. Pest control operator's fee fund abolished; transfer of moneys. All of the unencumbered moneys credited to the pest control operators' fee fund, created by K.S.A. 2-2410 is hereby transferred to the pesticide use fee fund, and the pest control operators' fee fund is hereby abolished.

2-2466. License renewal for partial year. (a) Any person licensed under the pest control act for the license year ending June 30, 1977 may obtain license renewal for the period ending December 31, 1977 at one-half the license fee otherwise required by this act and shall not be required to pay further licensing fees for the 1977 licensing year to comply with this act.

(b) Persons licensed under the pesticide use law, covering the portion of the 1977 licensing year from October 21 to December 31, 1977 shall not be required to pay further licensing fees for the 1977 licensing year to comply with this act.

(c) The fees so collected for the first year shall be construed to cover an extended period of from October 21, 1977 through December 31, 1978.

2-2467a. Rules and regulations. The secretary is hereby authorized to promulgate and adopt rules and regulations for the administration of this act and concerning the following matters which include but are not limited to:

(a) The designation of certain pesticides as restricted use pesticides as provided in K.S.A. 2-2439, and amendments thereto;

(b) the designation of categories for the issuance of pesticide business licenses as provided in K.S.A. 2-2444a, and amendments thereto;

(c) the designation of categories for the certification of applicators as provided in K.S.A. 2-2444a, and amendments thereto;

(d) the designation of training requirements for those persons applying for a pest control technician's registration as provided in K.S.A. 2-2440b, and amendments thereto;

(e) the registration and identification of equipment used in the commercial application of pesticides as provided in K.S.A. 2-2456, and amendments thereto;

(f) the storing and discarding of pesticides, pesticide materials, pesticide rinsates and pesticide containers;

(g) proper health and safety precautions;

(h) proof of financial responsibility including acceptable surety bond, liability insurance coverage, letter of credit or proof of an escrow account;

(i) furnishing of reports and information necessary for the secretary to carry out the provisions of this act; and

(j) imposing limitations on the use of any pesticide in a manner inconsistent with its label or labeling, pursuant to K.S.A. 2-2471, and amendments thereto; and

(k) any procedural or other matters related to the designation of pesticide management areas.

2-2468. Citation of act. This shall be known and may be cited as the "Kansas pesticide law."

2-2469. Pesticide dealers; registration; exemptions; denial, suspension or revocation, hearing; fees. (a) Each person who is a pesticide dealer shall register with the secretary of agriculture. Registration shall be required for each business location distributing pesticides and shall be on a form provided by the secretary. Each registration shall expire on June 30 following issuance unless such registration is renewed annually. A registration fee of \$20 shall accompany the application.

(b) The provisions of this section shall not apply to a licensed pesticide business which sells pesticides only as an integral part of such business' pesticide application service when the pesticides are dispensed only through equipment used for this pesticide application, nor to the sale of general use pesticides purchased for household use only, nor to any federal, state, county or municipal agency which provides pesticides only for its own programs nor to any individual who is the final purchaser of a pesticide for application to property or property rights owned, leased, or otherwise acquired by such person.

(c) Each registered pesticide dealer is responsible for the acts of each individual employed by such dealer in the solicitation and sale of pesticides and all claims and recommendations for use of pesticides. The dealer's registration shall be subject to denial, suspension, or revocation after a hearing in accordance with the provisions of the Kansas administrative procedure act for any violation of this act whether committed by the dealer or by the dealer's officers, agents or employees.

(d) All fees received under this section shall be remitted to the state treasurer in accordance with K.S.A. 2-2464a and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and 75% of such amount shall be credited to the pesticide use fee fund and 25% of each such amount shall be credited to the publications fee fund of the Kansas department of agriculture.

2-2470. Allowable pesticide applications by the applicator. Unless limited by K.S.A. 2-2471, the applicator may: (1) Apply a pesticide at any dosage, concentration or frequency less than that specified on the label or labeling; or (2) apply a pesticide against any target pest not specified on the labeling if the application is to the crop, animal or site specified on the labeling, and if the secretary has determined that the use of the pesticide against other pests would not cause an unreasonable effect on the environment.

2-2471. Rule and regulation authority to the secretary to limit pesticide use. Notwithstanding the provisions of K.S.A. 2-2470, whenever the secretary deems it necessary to preserve the health, safety and welfare or the natural resources of the state, the secretary is hereby authorized to promulgate rules and regulations imposing limitations on the use of any pesticide in a manner inconsistent with its label or labeling.

2-2472. Pesticide management areas; development by the secretary. (a) The secretary of the Kansas department of agriculture is hereby authorized and may develop pesticide management areas after receiving notification by the administrator of the United States environmental protection agency or by the secretary of the Kansas department of health and environment, that a pesticide poses a serious threat to the public health, safety and welfare or the natural resources of this state.

(b) The secretary upon the secretary's own investigation may initiate such proceedings whenever the secretary has reason to believe that a pesticide poses a serious threat to the public health, safety and welfare or the natural resources of this state.

2-2473. Same; factors to examine in area development; pesticide management area technical advisory committee; composition and duties thereof. (a) The pesticide management areas shall be developed by examination of the following factors:

- (1) Precipitation;
- (2) topography;
- (3) soil type;
- (4) depth to the watertable; and
- (5) other factors as the secretary deems relevant.

The areas shall be designated as permitted, modified or prohibited for the use of certain types of pesticides as determined by the pesticide management plan for the management area. The order of the secretary designating such pesticide management area shall define specifically the boundaries of the pesticide management area and shall indicate specifically the pesticide management plan for the area. Pesticide management plans may include provisions for the handling or release of pesticides, including but not limited to the application, mixing, loading, storage, disposal or transportation and guidelines for the best management practices.

(b) When considering whether to establish such pesticide management areas, the secretary shall consult with a pesticide management area technical advisory committee composed of a representative or representatives of each of the following: (1) Kansas department of health and environment appointed by the secretary of health and environment; (2) Kansas department of wildlife and parks appointed by the secretary of wildlife and parks; (3) Kansas state university appointed by the president of Kansas state university; (4) Kansas water authority appointed by the chairperson of the Kansas water authority; (5) conservation commission appointed by the chairperson of the state conservation commission; (6) Kansas geological survey appointed by the state geologist; and (7) other persons the secretary determines to have beneficial information to the establishment of such areas as appointed by the secretary. This technical advisory committee shall assist the secretary in the development of the proposed boundaries of the pesticide management area and the proposed plan for the pesticide management area.

2-2474. Same; public hearing concerning designation; notice. Notwithstanding the provisions of K.S.A. 2-2475, before designating any pesticide management area, the secretary shall hold a public hearing at which any interested party may appear and be heard in person or by attorney. Notice of the hearing shall be given by a publication in the Kansas register and by three publications in a newspaper or newspapers of general circulation within the area in question within the 30-day period prior to the date set for the hearing. The notice shall state the proposed boundaries of the pesticide management area and a summary of the proposed pesticide management plan to be applied within the proposed pesticide management area.

2-2475. Temporary pesticide management areas; secretary authorization. Where, in the opinion of the secretary, a pesticide poses an imminent threat to the public health, safety and welfare or the natural resources of this state the secretary is authorized to establish temporary pesticide management areas for a period not to exceed 90 days. The order of designation of a temporary pesticide management area shall be in full force and effect upon entry in the records of the secretary and the secretary shall take all steps reasonably necessary to disseminate the information of the order to all interested parties.

2-2476. Pesticide management area; order of designation. Notwithstanding the provisions of K.S.A. 2-2475, the order of designation of a pesticide management area shall be in full force and effect 60 days from the date of publication in the Kansas register unless and until its operation shall be stayed by an appeal therefrom in accordance with the provisions of the act for judicial review and civil enforcement of agency action. The secretary upon request shall deliver a copy of such order to any interested person who is affected by such order, and shall file a copy of the same with the register of deeds of any county which lies within such designated pesticide management area.

2-2477. Same; secretary authorization to revoke, modify or expand. The secretary is authorized to revoke, modify or expand the boundaries or plan of a pesticide management area after publication and public hearings, pursuant to K.S.A. 2-2474, on the proposed change.

2-2478. Same; use of pesticides in area; civil penalty; appeal procedure. (a) Following the establishment of any pesticide management area, all persons shall use pesticides consistently with the provisions of the pesticide management plan for the pesticide management area. Any person who applies pesticides in violation of a plan of an established pesticide management area may incur a civil penalty in the amount fixed by rules and regulations of the secretary in an amount not less than \$100 nor more than \$5,000 for each violation.

(b) No civil penalty shall be imposed pursuant to this section except upon the written order of the secretary or the secretary's duly authorized agent to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to the secretary. Any such person, within 20 days after

notification, may make written request to the secretary for a hearing or informal conference hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order and shall specify the reasons therefor.

(c) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the act for judicial review and civil enforcement of agency actions.

(d) Any civil penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

2-2479. Same; statewide education program on areas and plans. The secretary shall initiate a statewide program to educate the public on pesticide management areas and pesticide management plans. The secretary may use other state agencies as well as the Kansas cooperative extension service to disseminate this information to the public.

2-2480. Uniformity of pesticide law; state has exclusive jurisdiction. (a) On and after the effective date of this act, the provisions of the Kansas pesticide law, and any rules and regulations promulgated thereunder relating to pesticide sale or use, including, but not limited to, application of pesticides, training and certification of pesticide applicators, storage of pesticides, transportation of pesticides and disposal of pesticides within the state of Kansas shall be applicable and uniform throughout this state and in all cities, counties and political subdivisions therein. No local authority shall enact or enforce any law, ordinance, rule, regulation or resolution in conflict with, in addition to, or supplemental to, the provisions of the Kansas pesticide law unless expressly authorized by law to do so. Any law, ordinance, rule, regulation or resolution in conflict with, in addition to, or supplemental to, the provisions of the Kansas pesticide law is hereby declared to be invalid and of no effect. Any amendment to the Kansas pesticide law or any amendment of the rules and regulations promulgated thereunder, shall supersede and preempt the conflicting, additional or supplemental provisions of any law, ordinance, rule, regulation or resolution enacted by any city, county or other political subdivision of this state.

(b) Nothing in this section shall be construed to preempt or otherwise limit the authority of any city, county or political subdivision therein to adopt and enforce zoning regulations, fire codes or hazardous waste disposal restrictions.

(c) This act is supplemental to and shall become a part of the Kansas pesticide law.

74-568 State board of agriculture and secretary of the state board of agriculture abolished; transfer of power and duties to the department of agriculture and secretary of agriculture. (a) The state board of agriculture created by K.S.A. 74-503, and amendments thereto, and the office of the secretary of the state board of agriculture created by K.S.A. 74-503, and amendments thereto, are hereby abolished.

(b) Except as otherwise provided by this act, all of the powers, duties and functions of the existing state board of agriculture and the existing secretary of the state board of agriculture are hereby transferred to and conferred and imposed upon, the department of agriculture and the secretary of agriculture established by this act.

(c) Except as otherwise provided by this act, the department of agriculture and the secretary of agriculture established by this act shall be the successor in every way to the powers, duties and functions of the state board of agriculture and the secretary of agriculture in which the same were vested prior to the effective date of this act. Every act performed in the exercise of such powers, duties and functions by or under the authority of the department of agriculture or the secretary of agriculture established by this act shall be deemed to have the same force and effect as if performed by the state board of agriculture or the secretary of the state board of agriculture, respectively, in which such powers, duties and functions were vested prior to the effective date of this act.

(d) Except as otherwise provided by this act, whenever the state board of agriculture, or words of the like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the secretary of agriculture established by this act.

(e) Except as otherwise provided by this act, whenever the secretary of the state board of agriculture, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the secretary of agriculture established by this act.

(f) All rules and regulations of the state board of agriculture or the secretary of the state board of agriculture in existence on the effective date of this act shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the secretary of agriculture by this act until revised amended or nullified pursuant to law.

(g) All rules and regulations of the division of water resources of the state board of agriculture or the chief engineer of the division of water resources of the state board of agriculture in existence on the effective date of this act shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the chief engineer of the division of water resources of the department of agriculture established by this act until revised, amended, revoked or nullified pursuant to law.

(h) All orders and directives of the state board of agriculture or the secretary of the state board of agriculture in existence in the effective date of this act shall continue to be effective and shall be deemed to be orders and directives of the secretary of agriculture established by this act, until revised, amended, revoked or nullified pursuant to law.

(i) On the effective date of this act, the secretary of agriculture shall succeed to whatever right, title or interest the state board of agriculture has acquired in any real property in this state, and the secretary shall hold the same for and in the name of the state of Kansas. On and after the effective date of this act, whenever any statute, contract, deed or other document concerns the power or authority of the state board of agriculture or the secretary of the state board of agriculture to acquire, hold or dispose of real property or any interest therein, the secretary of agriculture shall succeed to such power or authority.

(j) The secretary of agriculture established by this act shall be continuations of the state board of agriculture and the secretary of the state board of agriculture.

Kansas Administrative Regulations

Article 13. PESTICIDES

4-13-1. Definitions.

(a) "Alternative treatment" means any method of pest control service performed for the purpose of controlling termites, other than those specified in subsections (b), (c), (d), (e), (g), and (h). This term shall include non-chemical methods of control and above-ground pesticide application.

(b) "Bait treatments" and "baiting system" mean the installation, servicing, and monitoring of termite bait stations and termite monitoring stations for the purpose of controlling termites within a structure. The placement of monitoring stations without a written agreement to periodically inspect the monitoring stations and replace monitoring stakes or other materials with a pesticide shall not constitute a bait treatment or baiting system.

(c)(1) "Complete soil treatment" and "complete treatment" mean a pesticide application to soil for the control of termites and shall include both of the following:

(A) Applying pesticide at the concentration, rate, and dosage required by the product labeling in such a manner that a chemical barrier is formed at all sites of potential termite entry into the structure from the soil, including the interior and exterior foundation walls and cross walls; the area around any support piers, expansion joints, and cracks in concrete slabs; any void areas in masonry elements; and any other structural components that extend below soil grade; and

(B) removing wood scrap, paper scrap, and all other cellulose-containing debris from any accessible areas of crawl spaces under buildings being treated.

(2) Applications to wooden construction elements, the use of baits, and the use of alternative methods of control shall not be represented as complete treatments.

(d) "Limited soil treatment" and "limited treatment" mean a pesticide application that is intended to provide protection from termite infestation to the entire structure, but is not designed to provide a continuous barrier of pesticide to the soil, including treating only the exterior perimeter of a slab structure.

(e) "Partial soil treatment" and "partial treatment" mean applications of pesticide for soil treatment that are not intended to provide protection from termite infestation for the entire structure treated.

(f) "Restricted-use pesticide" means any pesticide product registered by the secretary under the provisions of the agricultural chemical act of 1947, K.S.A. 2-2204, and amendments thereto, that is labeled as a restricted-use pesticide by the federal agency responsible for the classification and that is designated as a restricted-use pesticide by the secretary.

(g) "Spot treatment" means remedial applications of pesticide to control termites at a specific location within a structure that are not intended to control termites at any location beyond the treatment area.

(h) "Wood treatment" means the application of pesticide to wooden structural components, including joints, voids, galleries, and chambers, that may be present within wooden construction elements. (Authorized by and implementing K.S.A. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended July 18, 2003.)

4-13-2. Pesticide business license application. Each application for issuance or renewal of a business license shall provide the following information in addition to that required by K.S.A. 2-2440 (b) (1) through (3), and amendments thereto:

(a) The home address and birth date of each owner, officer, representative, and any resident agent;

(b) the name of any other state in which the applicant holds or has held a pesticide business license within the last five years and a list of any such license that has been denied, modified, revoked, suspended, or surrendered;

(c) for each business location serving Kansas, the business name and street address of the business and the name of the certified applicator or other person responsible for pesticide business activity at that location. "Business location" shall include all locations where records of application are maintained, where application equipment and pesticide materials are stored, and from which customers are served;

(d) the name of each certified commercial applicator serving the applicant, for each business location;

- (e) the name, home address, social security number, and birth date of each non-certified employee who applies pesticides for the applicant;
- (f) the categories in which the applicant business will operate;
- (g) the signature and title of the applicant or authorized representative; and
- (h) the date of submission of the application. (Authorized by and implementing K.S.A. 2-2440, as amended by L. 2002, Ch. 181, Sec. 3, and K.S.A. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended July 18, 2003.)

4-13-3. Categories and subcategories for the licensing of pesticide businesses.

- (1) Agricultural pest control. This category includes any pesticide business which applies pesticides to agricultural plants or animals.
- (2) Forest pest control. This category includes any pesticide business which applies pesticides in forests, forest nurseries and forest seed producing areas.
- (3) Ornamental and turf pest control. This category includes any pesticide business which applies pesticides in the maintenance of ornamental trees, shrubs, flowers and turf.
- (4) Seed treatment. This category includes any pesticide business which applies pesticides on seeds.
- (5) Aquatic pest control. This category includes any pesticide business which applies pesticides to standing or running water.
- (6) Right-of-way pest control. This category includes any pesticide business which applies pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way or other similar areas.
- (7) Industrial, institutional, structural and health related pest control. This category includes any pesticide business which applies pesticides in, on or around food handling establishments, human dwellings, institutions such as schools and hospitals, industrial establishments including warehouses, grain elevator and food processing plants and any other structures and adjacent areas; and for the protection of stored, processed or manufactured products.

4-13-4. Written statement of service by business. (a) Any written statement of services or contract shall comply with the provisions of K.A.R. 4-13-4a and shall be presented to the customer before or upon completion of the work covered by said written statement or contract. Provided, that where the work covered involves two or more periodic applications over a specified period of time, such as monthly service calls for one year, the written statement shall be presented to the customer upon completion of the initial treatment. Supplemental statements setting forth the application date, each pesticide used, including the quantity applied, the wind direction and velocity, if any, and the applicator's signature shall be presented to the customer following each periodic application.

- (b) This regulation shall be in force and effect from and after January 1, 1991.

4-13-4a. Requirements for written contract or statement of services by business. (a) Each written contract or statement of services issued by a pesticide business licensee shall meet the following requirements, in addition to the requirements of K.S.A. 2-2455 and amendments thereto:

- (1) The address of the pesticide business licensee shall include the street address of the pesticide business licensee's office that provides the pest control service for the named customer.
- (2) The address of the customer shall include either the street address or the rural route and box number, whichever is applicable.
- (3) The name of each pest to be controlled shall be stated in terms of the common name for each pest or, in the alternative, shall be stated in terms of the scientific name for each pest.
- (4) Notwithstanding the requirements of paragraph (3) of this subsection, if the pest to be controlled is a weed, the name of the pest may be stated as grassy or broadleaf weeds.

(b)(1) For each pesticide applied, the statement of services shall include the complete product name of the pesticide, as the name appears on the label, and the pesticide's EPA registration number. If the pesticide applied does not have an EPA registration number, the Kansas registration number shall be provided.

(2) The concentration of the pesticide shall include the percent of the active ingredient in the pesticide mixture or solution actually applied. The quantity of pesticide mixture actually applied shall be stated in gallons or other appropriate volumetric unit if the pesticide applied has been diluted. For granular pesticides or other pesticides that are applied undiluted, the quantity applied shall be expressed in terms of pounds or other appropriate units using dry weight. Rates of application shall be expressed in terms of a unit volume or weight of pesticide per unit of length, surface area, or volume corresponding to the mixing directions shown on the pesticide's label.

(3) Each statement of services shall include wind direction and velocity, except that this requirement shall not apply when the pesticide application is made in any of the following manners or locations or for any of the following reasons:

- (A) Inside an enclosed structure;
- (B) to control structural pests by use of a barrier treatment within 10 feet of the exterior of a building;

- (C) for seed treatment;
- (D) by direct injection of the pesticide into the soil or other substrate;
- (E) by direct application to the soil in a trench around a structure; or
- (F) by use of baiting stations, including the installation, servicing, and monitoring of the stations.

(c) Whenever any pesticide mixture or solution is applied at a dosage, concentration, or frequency of application that is less than that specified on the pesticide's label or labeling, at least one of the following requirements shall be met:

(1) The written statement of services shall state the following, or its equivalent, in a conspicuous manner: "PESTICIDE APPLIED AT LESS THAN LABEL RATE."

(2) In addition to or in lieu of the requirements of paragraph (c)(1), the licensee shall provide the customer with information about the conditions under which applications may be made at less than label dosage, concentration, or frequency, before the time of the initial application. The licensee shall obtain the customer's written acceptance of the use of these methods in writing before the initial application, which may be incorporated into any statement of service or contract, or both.

(d) Whenever any pesticide is applied in office buildings, apartment houses, or other multiple-tenant structures, the pesticide business licensee shall make available to the owner or manager of the structure information concerning any pesticide applied in the structure. In addition, information regarding any specific residence or business that has been treated with any pesticide shall be made available, upon the tenant's request, to the tenant of the residence or business treated.

(e) Whenever any pesticide is applied for the purpose of controlling termites, powder-post beetles, wood borers, wood-rot fungus, or any other wood-destroying pest, the licensee shall meet the following requirements:

(1) The diagram required by K.S.A. 2-2455(b)(3), and amendments thereto, shall clearly represent the structure being treated and indicate the location of basement areas, crawl spaces, concrete slab floors, and any concrete slabs adjacent to the outside of the foundation walls of the structure.

(2) If the pesticide application is not for a complete treatment of the entire structure, as defined by K.A.R. 4-13-1 and K.A.R. 4-13-7, the written statement of services shall state the following in a conspicuous manner: "LIMITED TREATMENT," "PARTIAL TREATMENT," "SPOT TREATMENT," "BAITING SYSTEM," "ALTERNATIVE TREATMENT," or other equivalent statement. Each pesticide application that is not for a complete treatment of the entire structure shall show the areas of treatment on the representative diagram. If the pesticide application is not for a complete treatment of the entire structure due to exigent circumstances, in addition to requirements listed above, the exigent circumstances shall be described on the statement of services.

(3) Each statement of services for termite control involving the use of baiting systems shall clearly state whether the pest control service performed consists of placement or inspection, or both, of baiting material that contains pesticide or consists of placement or inspection, or both, of monitoring stations that do not contain pesticide. Each statement of services shall include records of the dates of placement and inspection and the locations of all bait stations and monitoring stations. Diagrams of the structure being treated shall clearly show the locations of all monitors and baits.

(4) The dates of inspection or inspection intervals and the conditions under which monitoring materials will be replaced by baiting materials shall be stated in any contract for service or statement of services. Each licensee shall maintain records of the dates of placement and inspection and the locations of bait stations and monitoring stations. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2455; effective March 26, 1990; amended July 18, 2003.)

4-13-5. Written statement of service by certified commercial applicator not acting for business. (a) Any certified commercial applicator who is not employed by or otherwise acting for a pesticide business licensee shall prepare a written statement of work performed for each application of restricted use pesticides either made by or made under the direct supervision of the certified commercial applicator. Each such written statement of work performed shall set forth the following information:

- (1) The name and address of the certified commercial applicator;
- (2) All information required by K.S.A. 2-2455 as amended and supplemented and K.A.R. 4-13-4a except the name and address of the pesticide business licensee.

(b) This regulation shall be in force from and after January 1, 1991.

4-13-6. Marking of vehicles. Each business licensee with a license in category 3 or 7, as specified in K.A.R. 4-13-3, shall mark any vehicle used in the application of pesticides, including any vehicle used in transporting pesticide application equipment to an application site. Each licensee shall place the business name or registered trade name and the pesticide business license number on each side of the vehicle, with letters and numbers not less than 1½ inches in height and in a color contrasting from that of the vehicle. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2456; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended July 18, 2003.)

4-13-7. Termite control application procedures. (a) Except as provided in subsection (c), each structure shall be treated by applying pesticide at the rate, concentration, and dosage specified on the product label in a manner that provides wooden construction elements with protection from termites in the entire structure.

(b) Wood, paper scrap, cardboard scrap, and other cellulose-containing debris shall be removed from any accessible crawl space under the building to be treated.

(c) An application procedure different from that required by subsection (a) may be employed by a certified applicator. When a different application procedure is used, the pest control operator shall furnish adequate control and shall state on the required written statement the application procedure used. These methods of control shall be requested or agreed to by the customer in writing before completion of application. The applicator shall state, on the required statement of services and diagram, the application procedures used and how the procedures differ from the requirements of subsection (a). (Authorized by and implementing K.S.A. 2-2467a and K.S.A. 2-2471; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended July 18, 2003.)

4-13-8. Surety bond requirement. Any surety bond submitted by a pesticide business licensee to comply with the provisions of K.S.A. 2-2448 as amended shall provide bond coverage of not less than \$6,000. The bond shall be effective for a period not to exceed one year and shall extend to December 31 of the licensing year.

4-13-9. Report of address, name or personnel change by business. Each pesticide business licensee shall notify the secretary of any modification of the initial application regarding the business address or business name, and of any change in service personnel involved in the application of pesticides on a provided form or in writing within 30 days of the modification or change made by the pesticide business licensee. Notification shall be required for the following:

- (1) Hiring or terminating, or both, any employees involved in the application of pesticides;
- (2) making any change in certification or technician status, or both; and
- (3) making any change in the manager, operator, authorized representative, or resident agent.

(b) The pesticide business licensee shall submit with each such report the required \$15.00 fee for each previously unreported uncertified individual employed to apply pesticides for a total of more than 10 days or for a period of five or more consecutive days during any 30-day period. This report shall provide the full name, home address, social security number, and birth date of each certified and uncertified applicator of pesticides listed in the report. The \$15.00 fee shall revert to \$10.00 on and after July 1, 2005, unless the termination date is modified by statute. (amended Oct. 25, 2002.)

4-13-10. Application for governmental agency registration. An application for a governmental agency registration or for renewal of a governmental agency registration shall provide the following information in addition to that required by K.S.A. 2-2440 (e):

- (1) If the applicant is a township, the county in which said township is located.
- (2) Names of certified applicators and uncertified persons working under their supervision who will work under the governmental agency registration being applied for.
- (3) Signature and title of the official submitting the application.
- (4) Date the application is submitted.

4-13-11. Categories and subcategories of commercial applicator certification. (a) Category 1-agricultural pest control. This category shall include commercial applicators using or supervising the use of restricted use pesticides in the production of agricultural crops and animals.

(1) Subcategory 1a-agricultural plant pest control. This subcategory shall include commercial applicators using or supervising the use of restricted use pesticides on grasslands and non-crop agricultural lands and in production of agricultural crops, including tobacco, peanuts, cotton, feed grains, soybeans and forage, vegetables, small fruits, tree fruits and nuts.

(2) Subcategory 1b-agricultural animal pest control. This subcategory shall include commercial applicators using or supervising the use of restricted use pesticides for places on or in which animals are confined and on animals, including beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock. Doctors of veterinary medicine who apply pesticides for hire, publicly hold themselves out as pesticide applicators, or engage in large-scale use of pesticides shall be included in the agricultural animal pest control category.

(3) Subcategory 1c-wildlife damage control. This subcategory shall include commercial applicators using or supervising the use of restricted use pesticides for the management and control of wildlife in rangeland and agricultural areas. Wildlife shall mean non-domesticated vertebrate species which hinder agricultural and rangeland production.

(b) Category 2-forest pest control. This category shall include commercial applicators using or supervising the use of restricted use pesticides in forests, forest nurseries, and forest seed-producing areas.

(c) Category 3-ornamental and turf pest control. This category shall include commercial applicators using or supervising the use of restricted use pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.

(1) Subcategory 3a-ornamental pest control. This subcategory shall include commercial applicators using or supervising the use of restricted use pesticides to control pests in the maintenance and production of ornamental trees, shrubs and flowers not included in subcategory 3c of this regulation.

(2) Subcategory 3b-turf pest control. This subcategory shall include commercial applicators using or supervising the use of restricted use pesticides to control pests in the maintenance and production of turf.

(3) Subcategory 3c-interior landscape pest control. This subcategory shall include commercial applicators using or supervising the use of restricted use pesticides to control pests in the production and maintenance of houseplants and other indoor ornamental plants kept or located within structures occupied by humans including but not limited to houses, apartments, offices, shopping malls, other places of business and other dwelling places.

(d) Category 4-seed treatment. This category shall include commercial applicators using or supervising the use of restricted use pesticides on seeds.

(e) Category 5-aquatic pest control. This category shall include commercial applicators using or supervising the use of any restricted use pesticide purposefully applied to standing or running water. Applicators engaged in public health-related activities included under subsection (h) shall be excluded.

(f) Category 6-right-of-way pest control. This category shall include commercial applicators using or supervising the use of restricted use pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way or other similar areas. Applicators engaged in regulatory activities under subsection (i) shall be excluded.

(g) Category 7-industrial, institutional, structural and health-related pest control. This category shall include commercial applicators using or supervising the use of restricted use pesticides for the protection of stored, processed or manufactured products and in, on, or around food-handling establishments, human dwellings, institutions, schools and hospitals, industrial establishments, including warehouses and grain elevators, and any other structures and adjacent areas, public or private.

(1) Subcategory 7a-wood-destroying pest control. This subcategory shall include commercial applicators using or supervising the use of restricted use pesticides in the control of termites, powder post beetles, wood borers, wood rot fungus and any other wood-destroying pest.

(2) Subcategory 7b-stored products pest control. This subcategory shall include commercial applicators using or supervising the use of restricted use pesticides in the control of pests in stored grain and food products.

(3) Subcategory 7c-industrial weed control. The subcategory shall include commercial applicators using or supervising the use of restricted use pesticides in the control of pest weeds.

(4) Subcategory 7d-health-related pest control. This subcategory shall include commercial applicators using or supervising the use of restricted use pesticides in health programs for the management and control of pests having medical and public health significance.

(5) Subcategory 7e-structural pest control. This subcategory shall include commercial applicators using or supervising the use of restricted use pesticides in structures for control of any pest not covered in paragraph (g)(1) or (g)(2) of this regulation.

(6) Subcategory 7f-wood preservation and wood products treatment. This subcategory shall include commercial applicators using or supervising the use of restricted use pesticides to extend the life of wooden poles, posts, crossties and other wood products to preserve or protect them from damage by insects, fungi, marine organisms, weather deterioration or other wood-destroying agents.

(h) Category 8-public health pest control. This category shall include state, federal, or other governmental employees using or supervising the use of restricted use pesticides in public health programs for the management and control of pests having medical and public health significance.

(i) Category 9-regulatory pest control. This category shall include state, federal, or other governmental employees who use or supervise the use of restricted use pesticides in the control of federal and state regulated pests.

(1) Subcategory 9a-noxious weed control. This subcategory shall include state or other governmental employees who use or supervise the use of restricted use pesticides in the control of weed pests regulated under the Kansas noxious weed law.

(2) Subcategory 9b-regulated pest control. This subcategory shall include state, federal or other governmental employees who use or supervise the use of restricted use pesticides in the control of federal or state regulated pests not covered by paragraph (i)(1).

(j) Category 10-demonstration and research pest control. This category shall include:

(1) individuals who demonstrate to the public the proper techniques for application and use of restricted use pesticides or who supervise such a demonstration. Such individuals shall include extension specialists, county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs;

(2) persons who use or supervise the use of restricted use pesticides in conducting field research which involves the use of pesticides. These such persons shall include state, federal, and commercial employees and other persons conducting field research regarding or utilizing restricted use pesticides; and

(3) qualified laboratory personnel using restricted use pesticides while engaged in pesticide research in areas where environmental factors beyond their control, such as wind, rain or similar factors, can affect the safe use of the pesticide or cause it to have an adverse impact on the environment. The such personnel listed in paragraphs (j)(2) and (3) shall not be considered exempt from certification under the provisions of K.S.A. 2-2441(d).

(k) This regulation shall become effective on January 1, 1989.

4-13-12. Age Restriction for Certification. To be eligible for certification as a commercial applicator of restricted use pesticides, an individual shall be eighteen (18) years of age or older.

4-13-13. Commercial applicator examination. (a) Each examination for commercial applicator certification shall test the applicant's knowledge in the following subjects in addition to those subjects set out in K.S.A. 2-2443a (a) through (h).

(1) Each examination shall test the applicant's practical knowledge of pesticide application including:

(A) The general format and terminology of pesticide labels and labeling, the instructions, warnings, symbols and other information appearing on pesticide labels, the classification designation on pesticide labels and the necessity of using each pesticide in a manner which is consistent with information and instructions on its label;

(B) safety factors, including pesticide toxicity, types and causes of pesticide accidents, precautionary measures which are necessary to guard against injury to the applicator and other individuals, symptoms of pesticide poisoning, first aid and other procedures to follow in case of a pesticide accident, proper identification, storage, transportation of, mixing and handling of pesticides, prevention of and cleanup of pesticide spills and disposal of pesticide containers;

(C) the potential for damage to the environment from use and misuse of pesticides as influenced by such factors as types of terrain, soil and other substrata and drainage patterns;

(D) pest development and biology as it may be relevant to pest identification and control;

(E) types of pesticides and pesticide formulations used, compatibility, synergism, persistence and animal and plant toxicity of pesticides, practices that cause pesticide resistance and dilution procedures.

(F) types of equipment used and the limitations of each, equipment use, maintenance and calibration;

(G) proper application techniques for various pesticides and formulations of pesticide in given situations, relationship of placement of pesticides to proper use, unnecessary pesticide use and pesticide misuse, and prevention of pesticide loss into the environment through drift and other means; and

(H) requirements which must be met by a certified applicator in supervising noncertified applicators of restricted pesticides, including practical knowledge of federal and state supervisory requirements; requirements found on labeling; requirements regarding verifiable instruction of the noncertified applicator and availability of certified applicator during application; and any added restrictions which may be imposed for specific pesticides through labeling including the required physical presence of the supervising applicator during the application.

(2) Each examination shall test the applicant's practical knowledge of the category and subcategory of applicator certification in which the applicant wishes to be certified.

(A) Agricultural pest control.

(i) Each examination for agricultural plant pest control applicators shall test the applicant's practical knowledge of the crops grown in Kansas and the specific pests commonly associated with these crops, potential soil and water damage, preharvest intervals, re-entry intervals, phytotoxicity, environmental contamination, non-target injury and potential adverse effects on the community which are related to the use of restricted pesticides in agricultural areas.

(ii) Each examination for agricultural animal pest control applicators shall test the applicant's practical knowledge of Kansas agricultural animals and their pests, specific pesticide toxicity levels, residue potential and relative hazards associated with various pesticide formulations, application techniques, ages of animals, stress and extent of treatment.

(iii) Each examination for wildlife damage control applicators shall test the applicant's practical knowledge of vertebrate species pests and damage associated with each, methods useful in damage prevention, products used in damage control, the potential for direct poisonings of nontarget species, the potential for secondary poisonings, effects upon threatened and endangered species, specific pesticide toxicity and residue levels, and methods of application necessary to minimize hazards to humans, environment, pets, and domestic animals.

(B) Forest pest control. Each examination for forest pest control applicators shall test the applicant's practical knowledge of types of forests, forest nurseries and forest seed production in Kansas and of the pests associated with them, pest cycles and population dynamics as they influence control programming, biotic agents and their relative vulnerability to pesticides, and proper use of specialized equipment as it relates to adjacent land use.

(C) Ornamental and turf pest control.

(i) Each examination for ornamental pest control applicators shall test the applicant's practical knowledge of pest and pesticide problems associated with the production and maintenance of ornamental trees, shrubs and flowers in Kansas, potential phytotoxicity problems related to the wide variety of plants in treated areas, pesticide persistence beyond the intended period of control, and application methods which minimize hazards to humans, pets and domestic animals.

(ii) Each examination for turf pest control applicators shall test the applicant's practical knowledge of pest and pesticide problems associated with the production and maintenance of turf in Kansas, potential phytotoxicity problems related to the wide variety of plants in treated areas, pesticide persistence beyond the intended period of control and application methods which minimize hazards to humans, pets and domestic animals.

(iii) Each examination for interior landscape pest control applicators shall test the applicant's practical knowledge of pest and pesticide problems associated with the production and maintenance of houseplants and other ornamental plants

kept or located within structures occupied by humans including but not limited to houses, apartments, offices, shopping malls, other places of business and other dwelling places. The examination shall also test knowledge of potential phytotoxicity problems related to treatment of plants in enclosed areas, pesticide persistence beyond the intended period of control and application methods that minimize hazards to humans, pets and domestic animals.

(D) Seed treatment. Each examination for seed treatment applicators shall test the applicant's practical knowledge of the types of seeds that require protection against pests, factors which may affect germination, including seed coloration, carriers and surface active agents, hazards associated with handling, storing, mixing and misuse of treated seeds and proper disposal of unused treated seed.

(E) Aquatic pest control. Each examination for aquatic pest control applicators shall test the applicant's practical knowledge of secondary effects caused by improper application rates, incorrect formulations, and faulty aquatic pesticide applications; knowledge of various water use situations and the potential of downstream effects; knowledge of potential effects on plants, fish, birds, beneficial insects and other organisms in the aquatic environment; and knowledge of the principles of limited area application.

(F) Right-of-way pest control. Each examination for right-of-way pest control applicators shall test the applicant's practical knowledge of the wide variety of environments crossed by rights-of-way, problems of runoff, drift and excessive foliage destruction, the nature of herbicides, the need for containment of herbicides within the right-of-way area and the impact of applicator's activities on adjacent areas and communities.

(G) Industrial, institutional, structural and health related pest control.

(i) Each examination for wood-destroying pest control applicators shall test the applicant's practical knowledge of wood-destroying pests, their life cycles, pesticide formulations appropriate for their control, methods of application that avoid exposure of people and pets and specific factors which may lead to hazardous conditions, including continuous exposure to the pesticide use.

(ii) Each examination for stored products pest control shall test the applicant's practical knowledge of pests found in stored grain and food processing areas, their life cycles, pesticide formulations appropriate for their control, methods of application that avoid contamination of food products and exposure of people, and specific factors which may lead to a hazardous condition, including continuous exposure.

(iii) Each examination for industrial weed control applicators shall test the applicant's practical knowledge of weed pests found in industrial areas, pesticide formulations appropriate for their control, methods of application that avoid contamination of habitat and exposure of people and pets, and environmental conditions particularly related to this activity.

(iv) Each examination for health-related pest control applicators shall test the applicant's practical knowledge of vector-disease transmission as it relates to and influences application programs, pests which adversely affect public health, their life cycles and habitats and the variety of environments in which they are encountered.

(v) Each examination for structural pest control applicators shall test the applicant's practical knowledge of the wide variety of pests found in buildings, including their life cycles; types of pesticide formulations appropriate for their control and methods of application that avoid contamination of food, damage and contamination of habitat and exposure of people and pets; specific factors which may lead to a hazardous condition, including continuous exposure in the various situations encountered in this category; and environmental conditions particularly related to this activity.

(vi) Each examination for wood preservation and wood-products treatment applicators shall test the applicant's practical knowledge of pest problems and pests associated with wood degradation, including their life cycles, types of pesticide formulations appropriate for their control, methods of application, application hazards and safety, proper means of container storage, container and waste disposal. The examination shall also test knowledge of procedures to contain spills and to avoid contamination and exposure of the environment including people, domestic animals and wildlife.

(H) Public health pest control. Each examination for public health pest control applicators shall test the applicant's practical knowledge of vector-disease transmission as it relates to and influences application programs, pests which adversely affect public health, their life cycles and habitats, the variety of environments in which they are encountered and the importance of such non-chemical control methods as sanitation, waste disposal and drainage.

(I) Regulatory pest control.

(i) Each examination for noxious weed control applicators shall test the applicant's practical knowledge of pest weeds as regulated by the Kansas noxious weed law, the potential impact on the environment of restricted use pesticides used in suppression and eradication programs, and factors influencing introductions, spread, and population dynamics of those pest weeds.

(ii) Each examination for regulated pest control applicators shall test the applicant's practical knowledge of federal and state-regulated pests, applicable laws relating to quarantine and other regulations regarding pests, the potential impact on the environment of restricted use pesticides used in suppression and eradication programs, factors influencing introductions, spread and population dynamics of relevant pests.

(J) Demonstration and research pest control. Each examination for demonstration and research pest control applicators shall test the applicant's practical knowledge of the many different pest problems encountered in the course of activities associated with demonstration, field research and method improvement work, pesticide-organism interactions and the importance of integrating pesticide use with control methods. Such applicators shall meet the examination requirements

for application in the other categories that are applicable to their particular activity.

(b) Each emergency examination administered to applicants for temporary commercial applicator permits under K.S.A. 2-2442 shall be the same examination as is required under K.S.A. 2-2443 and the preceding portions of this regulation.

(c) A grade of 75% correct answers shall be required to pass any commercial applicator examination.

(d) This regulation shall become effective on January 1, 1989.

4-13-14. Private applicator examination. Initial examinations for certified private applicators shall be taken in the presence of a representative of the Kansas State Board of Agriculture or the Kansas State University Extension Service. The applicant for this certification is required to answer 75% of the questions correctly to pass the examination.

Examinations for private applicator certification shall test the applicant's knowledge in those subject areas set out in K.S.A. 2-2445 involving pest control practices associated with the applicant's agricultural operation and the applicant's legal responsibility as a certified applicator of restricted pesticides. The applicant will be tested to determine the applicant's ability to:

- (1) Recognize common pests to be controlled and damage caused by them;
- (2) read and understand the label and labeling information including the common name of the pesticide he applies; pest or pests to be controlled; timing and methods of application; safety precautions; any preharvest re-entry restrictions; and any specific disposal procedures;
- (3) apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;
- (4) recognize local environmental situations that must be considered during application to avoid contamination;
- (5) recognize poisoning symptoms and procedures to follow in case of a pesticide accident; and
- (6) understand federal and state supervisory requirements, including labeling, which must be met by a certified private applicator in supervising non-certified application of restricted pesticides. This includes verifiable instruction of the applicator, availability during application and added restrictions which may be imposed for specific pesticides through labeling. Such restrictions may include the required physical presence of the supervising applicator during the application.

4-13-15. Certificates and pocket cards. A certificate and pocket card shall be issued to each certified person upon satisfactory completion of the requirements for certification. Such certificate and pocket card shall show the applicator's name, type of certificate issued, the category of issuance including subcategory, if any, the expiration date of the certification and other pertinent information. The certified applicator shall produce such certificate or pocket card when requested to do so by any customer, law enforcement official, the secretary or any authorized representative of the secretary.

4-13-16. Supervision of uncertified applicators. An uncertified applicator of restricted use pesticides shall be considered to be under the supervision of a certified applicator when the certified applicator has provided the uncertified applicator with detailed instructions in the handling and application of the pesticide being used. The certified applicator shall be available to the uncertified applicator by telephone, 2-way radio or other comparable means of communication during the times the restricted use pesticide is being applied. The certified applicator shall be physically present when such presence is required by the pesticide label. The certified applicator shall verify that the above requirements were met when requested to do so by the secretary or the secretary's authorized representative. Additionally, any uncertified applicator of restricted use pesticides, including registered pest control technicians, shall be considered to be under the supervision of a certified commercial applicator only if both individuals are stationed at and work from the same business address.

4-13-17. Report of address change by certified applicators. Any certified commercial applicator shall notify the secretary of any change in his or her mailing address by the tenth day of the month following the month during which such change occurred.

4-13-18. Disposal of pesticides and containers. Any unused pesticide and any empty pesticide container shall be stored in the same manner as the pesticide involved until such unused pesticide or empty container is disposed of in a manner consistent with technology current at the time of disposal. Questions regarding the latest technology should be directed to the Kansas State Board of Agriculture; Kansas State University, Extension Service; Kansas Department of Health and Environment; or the United States Environmental Protection Agency.

4-13-19. Marking of aircraft. Each pesticide business licensed in category one (1) which uses aircraft to apply pesticides shall identify each aircraft with a decal furnished by the secretary. Decals shall not be issued until all licensing requirements have been satisfied. Decals shall not be transferable. For fixed wing aircraft, the decal shall be affixed to and prominently displayed on the left rear portion of the cockpit or the canopy or on the left rear portion of the fuselage near the rear of the cockpit or canopy. For rotorcraft, the decal shall be affixed to and prominently displayed on the left side of the aircraft but

not on the tail rotor.

K.A.R. 4-13-20. Pesticide business license renewal, and uncertified employee fees. The application fee for a pesticide business license or for the renewal of a pesticide business license shall be \$140.00 for each category in which the applicant applies for a pesticide business license or renewal of that license. An additional fee of \$15.00 for each uncertified individual employed by the applicant to apply pesticides shall also be paid. This regulation shall apply to all pesticide business licenses, or renewals of these licenses, that will be effective on and after July 1, 2002 and through June 30, 2005, regardless of when the application is received by the agency.

The \$140.00 pesticide business license fee shall revert to \$112.00 on and after July 1, 2005, unless the termination date is modified by statute. The \$15.00 uncertified employee fee shall revert to \$10.00 on and after July 1, 2005, unless the termination date is modified by statute. (Amended Oct. 25, 2002.)

K.A.R. 4-13-21. Government agency registration and renewal fees. The application fee for a government agency registration shall be \$50.00. This regulation shall apply to all government agency registrations, or renewals of these registrations, effective on and after July 1, 2002 and through June 30, 2005, regardless of when the application is received by the agency. The \$50.00 government agency registration fee shall revert to \$35.00 on and after July 1, 2005, unless the termination date is modified by statute. (Amended Oct. 25, 2002.)

K.A.R. 4-13-22. Application fee for commercial applicator's certificate. The application fee for a commercial applicator's certificate shall be \$50.00 for each category in which the applicant applies. This regulation shall apply to all commercial applicator certificates, or renewals of these certificates, that will be effective on and after July 1, 2002 and through June 30, 2005, regardless of when the application is received by the agency. The \$50.00 application fee for a commercial applicator's certificate shall revert to \$35.00 on and after July 1, 2005, unless the termination date is modified by statute. (Amended Oct. 25, 2002.)

K.A.R. 4-13-23. Examination fees. The examination fee for a commercial applicator's certificate shall be \$35.00 on and after July 1, 2002 and through June 30, 2005, for each category in which the applicant is to be examined. The same fee shall apply if the applicant seeks reexamination. The \$35.00 examination fee shall revert to \$25.00 on and after July 1, 2005, unless the termination date is modified by statute. (amended Oct. 25, 2002.)

K.A.R. 4-13-24. Certified private applicator's certificate fee. The certified private applicator's certificate fee shall be \$25.00. This regulation shall apply to certified private applicator's certificates that will be effective on and after July 1, 2002 and through June 30, 2005, regardless of when the application is received by the agency. The \$25.00 certified private applicator's certificate fee shall revert to \$10.00 on and after July 1, 2005, unless the termination date is modified by statute. (Amended Oct. 25, 2002.)

K.A.R. 4-13-25. Bulk pesticide storage and handling of pesticides; definitions. As used in K.A.R. 4-13-25 through 4-13-25k, the following terms shall be defined as follows:

(a) "Appurtenance" means any valve, pump, fitting, pipe, hose, auger, metering device, and dispensing device connected to a storage container. "Dispensing device" shall include any device that is used to transfer bulk pesticides into or out of a container.

(b) "Bulk pesticide" means any pesticide, whether liquid or solid, that is kept at a standard temperature and pressure and is stored in an individual container of undivided capacity in quantities identified in K.A.R. 4-13-25b.

(c) "Bulk pesticide container" means any receptacle or device in which a pesticide is stored, mixed, treated, disposed of, or handled in any manner in quantities identified in K.A.R. 4-13-25b.

(d) "Bulk pesticide storage facility" and "facility" mean any warehouse, loading pad, or other area where a bulk pesticide is stored, mixed, loaded, or unloaded, unless otherwise exempted. Each bulk pesticide storage facility located within 300 feet of another facility owned or operated by the same person shall be considered the same facility for the purpose of finding the number of consecutive days in storage and determining whether the facility is exempt from the requirements of K.A.R. 4-13-25 through K.A.R. 4-13-25l.

(e) "Chemically compatible" means that the material will not react chemically adversely or electrolytically adversely to the bulk pesticide being stored, loaded, unloaded, mixed, or handled.

(f) "Discharge" means any spilling, leaking, depositing, pumping, dumping, or emptying, whether accidental or intentional, resulting in the release of a pesticide at a bulk pesticide storage facility. "Discharge" shall not include the lawful transferring, loading, unloading, repackaging, refilling, distributing, using, disposing, or application of a pesticide. This term shall also exclude the normal washing and rinsing activities on a mixing and loading pad.

(g) "Dry pesticide" means any bulk pesticide that is in solid form before any end-use application or before any mixing for end-use application. This term shall include making formulations including dusts, powders, and granules.

(h) “End-use application” means the application of a pesticide by the owner or lessee of the real property upon which the application is made to control a pest covered by the pesticide label.

(i) “Flood plain” means an area at one percent or greater risk of flood occurrence in any given year.

(j) “Gallon” means the United States standard measure of a gallon.

(k) “Inspection port” means a secured opening that allows access into the interior of a bulk pesticide storage container for the purpose of inspection.

(l) “Liquid bulk pesticide” means any bulk pesticide in liquid form before dilution for end-use application. This term shall include solutions, emulsions, suspensions, slurries, and gels.

(m) “Mixing and loading pad” and “pad” mean a surface designed to provide containment of a pesticide during the loading, unloading, mixing, or handling of a pesticide, or during the cleaning rinsing, or refilling of a pesticide container.

(n) “Mobile container” means a bulk pesticide container that is designed and used for transporting bulk pesticides.

(o) “Owner or operator” shall include any agent or employee of an owner or operator and mean any of the following:

(1) A dealer of pesticides as defined by K.S.A. 2-2469 and amendments thereto;

(2) a pesticide business licensee as defined by K.S.A. 2-2438a(p) and amendments thereto;

(3) a government agency registrant as addressed in K.S.A. 2-2440(e) and amendments thereto;

(4) a certified private applicator, as defined by K.S.A. 2-2438a(c)(2) and amendments thereto, of a bulk pesticide storage facility; or

(5) any other individual responsible for the bulk storage of pesticides as defined by subsection (b).

(p) “Permanent cessation of operations” means either of the following:

(1) No pesticides have been loaded, unloaded, or stored at the facility for 12 consecutive months.

(2) The facility has gone out of business and is no longer a going concern.

(q) “Primary containment” means the bulk pesticide container. However, synthetic container liners incapable of containing bulk pesticides independent of the support of another container shall not be considered primary containment.

(r) “Reasonably foreseeable” means what the secretary determines would have been foreseeable at the time the decision affecting the facility or its condition was made. “Reasonable foreseeability” shall include consideration of the owner’s or operator’s knowledge of conditions at the time the condition was created or the decision was made.

(s) “Reportable event” means any release of pesticide from a facility not contained by secondary containment that is required to be reported to the secretary of agriculture.

(t) “Secondary containment” means any structure, tank, or container that is designed, constructed, and maintained to intercept, hold, contain, or confine a discharge of pesticide from primary containment and to contain spills, prevent runoff, and avoid leaching.

(u) “Sump” means a recessed reservoir or catch basin designed to be a receptacle for the collection of liquids in the floor of secondary containment or in the part of the secondary containment that constitutes the loading pad. (Effective December 27, 2002.)

K.A.R. 4-13-25a. Exemptions. (a) The regulations found in K.A.R. 4-13-25 through K.A.R. 4-13-25k shall not apply to any of the following:

(1) A mobile container of 350-gallon capacity or less, if the use of the container is solely incidental to the end-use application of the bulk pesticide and if the container is not at a specific location for more than 60 days of storage in any consecutive 365-day period;

(2) a sealed or an unopened pesticide manufacturer’s storage container being loaded or unloaded;

(3) a railcar in which the storage of bulk pesticides is solely incidental to the transportation of the pesticide and that remains on a train track; or

(4) a bulk pesticide stored, loaded, or unloaded in quantities less than all the quantities specified in K.A.R. 4-13-25b.

(b) The owner or operator of a facility shall have the burden of establishing the applicability of an exemption under paragraph (a)(4) of this regulation.

(c) Contemporaneously kept records maintained pursuant to K.A.R. 4-13-25k shall constitute prima facie evidence of an exemption. (Effective December 27, 2002.)

K.A.R. 4-13-25b. Quantities of bulk pesticide. (a) A bulk pesticide shall be subject to the requirements of K.A.R. 4-13-25 through K.A.R. 4-13-25l if it is stored, loaded, or unloaded in a container designed for either of the following:

(1) Quantities greater than 55 gallons liquid measure; or

(2) quantities greater than 100 pounds net dry weight.

(b) A facility shall be subject to the requirements of K.A.R. 4-13-25 through K.A.R. 4-13-25l if either of the following conditions is met:

(1) A cumulative total of 1,000 gallons or more of liquid bulk pesticide is transferred away from the facility during

any consecutive 365-day period.

(2) A cumulative total of 3,000 pounds or more of dry bulk pesticide is transferred away from the facility during any consecutive 365-day period. (Effective December 27, 2002.)

K.A.R. 4-13-25c. Location, design, and construction requirements of a bulk pesticide storage facility. Each owner or operator shall meet the following requirements: (a) Each bulk pesticide storage facility shall be designed, constructed, and maintained according to the pesticide manufacturers' directions, instructions, or recommendations. The facility shall be constructed of materials that contain spills, prevent runoff, and avoid leaching of the pesticide being mixed, loaded, or unloaded. Construction materials shall be chemically compatible with the pesticides that come in contact with the material. The facility shall be designed, constructed, and maintained to accommodate all reasonably foreseeable loading and unloading conditions, including the anticipated wheel load of a vehicle or collision of a vehicle with a container or an appurtenance. Asphalt shall not be used as a material in the construction of a facility. Reasonable alternatives in materials and design that adequately serve the intended purpose shall be considered.

(b) No bulk pesticide storage facility shall be constructed or maintained in a flood plain unless the bulk pesticide is stored above the base flood elevation.

(c) The floor of each bulk pesticide storage facility shall be constructed of material that prevents the movement of pesticide materials and moisture through the floor and shall be designed, constructed, and maintained in a manner that allows discharges to be collected, contained, and recovered.

(d) All electrical equipment and wiring shall be elevated to prevent the equipment and wiring from becoming submerged and shall be grounded to dissipate static electricity.

(e) Both private and public water supplies shall be protected from contamination from the bulk pesticide storage facility.

(f) Each bulk pesticide storage facility shall contain a mixing and loading pad.

(g) Each bulk pesticide storage facility shall be secured to protect against reasonably foreseeable unauthorized access that could result in a discharge of pesticides.

(h) Each bulk pesticide storage facility shall be designed, constructed, and maintained to prevent contact of any dry bulk pesticide with precipitation. Contact with precipitation shall be prevented by use of a permanent cover.

(i) Each bulk pesticide storage facility shall be designed, constructed, and maintained to avoid the creation of pesticide waste and to prevent cross-contamination of pesticides.

(j) Bulk pesticides shall not be stored or mixed in underground containers. (Effective December 27, 2002.)

K.A.R. 4-13-25d. Secondary containment for bulk pesticide storage. Each owner or operator shall meet the following requirements: (a) All bulk pesticide shall be stored within secondary containment. The secondary containment shall contain a minimum of 110 percent of the capacity of the largest single bulk pesticide container in addition to the displacement of tanks, appurtenances, fixtures, equipment, and material located within the secondary containment.

(b) The secondary containment shall be constructed of sufficient thickness, density, and composition to contain any discharged material and shall be leakproof with cracks, seams, and joints sealed.

(c) The floor of the secondary containment shall drain to a sump.

(d) The sump shall be drained by an on-site operator.

(e) Any outlet or drain within the secondary containment shall be permanently plugged and sealed. The secondary containment exterior shall not have a relief outlet or valve. Sanitary and storm sewer drains shall not be located within the secondary containment.

(f) Secondary containment shall be constructed to allow the interior and exterior of the walls to be viewed.

(g) A soil liner shall not be considered adequate for the secondary containment of pesticides. Masonry block, clay, natural soil-clay mixtures, clay-bentonite mixtures, and prefabricated bentonite liners shall not be used as secondary containment. However, sealant-coated concrete blocks may be used if the facility owner's or operator's use of the blocks is approved in writing by the manufacturer of the pesticide.

(h) A synthetic liner used to line the secondary containment shall be installed and maintained according to the liner manufacturer's specifications, directions, and recommendations. The specifications, directions, and recommendations about liners from the manufacturers of the pesticides stored in the facility shall also be followed. All seams shall be tested, maintained, and repaired according to the manufacturer's specifications, directions, and recommendations. The liner shall be replaced if it cannot be repaired to meet the requirements of K.A.R. 4-13-25 through K.A.R. 4-13-25l. In no event shall a liner that is incapable of containing bulk pesticides independent of the support of another container be used in lieu of secondary containment. (Effective December 27, 2002.)

K.A.R. 4-13-25e. Requirements for mixing and loading pads for bulk pesticides. Each owner or operator shall meet the following requirements: (a) Each mixing and loading pad not connected to a storage area shall be of adequate size and design to contain at least 110 percent of the capacity of the container or tank on the pad and the displacement of tanks, equipment, appurtenances, fixtures, and material located on the pad.

(b) Each mixing and loading pad shall be constructed to contain any discharge and shall be leakproof with all cracks, seams, and joints sealed. The pad shall be impervious to spills and capable of supporting the weight of the heaviest vehicle plus all loading, unloading, and mixing operations. The mixing and loading pad shall drain liquids to a sump or other discrete point of recovery. The mixing and loading pad shall not have any recovery points other than to a sump or other discrete recovery point.

(c) The sump shall be drained by an on-site operator. (Effective December 27, 2002.)

K.A.R. 4-13-25f. Requirements for storage containers and appurtenances for bulk pesticides. Each owner or operator shall meet the following requirements: (a) Each bulk pesticide container shall be designed to handle all operating stresses, including static pressure, pressure buildup from pumps and compressors, and any other mechanical stresses to which the storage container may be subject during operations. Each bulk pesticide container shall be chemically compatible with the pesticide it holds and shall meet all specifications, directions, and recommendations of the manufacturers of the pesticide and bulk pesticide container.

(b) Every bulk pesticide container connection, except for safety relief connections, shall be equipped with a shutoff valve accessible and located within the secondary containment. Shut-off valves shall be left closed and secured except while the stored pesticide is being removed from the container.

(c) Bulk pesticide containers and appurtenances shall be adequately supported to prevent sagging.

(d) Sight gauges shall not be permitted on storage containers.

(e) Each bulk pesticide container that is not located within a structure with a roof and walls shall be designed, installed, and maintained to prevent flotation and to withstand winds of 90 miles per hour or less.

(f) Each bulk pesticide container shall be designed to protect against excessive internal pressure or vacuum.

(g) Each bulk pesticide container used for storage shall be marked clearly to identify the pesticide stored in the container. (Effective December 27, 2002.)

K.A.R. 4-13-25g. Discharge, recovery, and reporting requirements. (a) Each owner or operator shall recover promptly any discharge of a pesticide. The owner or operator may use the recovered pesticide for its intended purpose if it can be used according to the recovered pesticide's label or labeling. The owner or operator shall dispose of, in accordance with the label, any recovered pesticide that cannot be used.

(b) The owner or operator shall notify the secretary within 48 hours of any reportable event. (Effective December 27, 2002.)

K.A.R. 4-13-25h. Submission of structural plans. (a) Within one year following the effective date of this regulation, the owner or operator of each existing or proposed bulk pesticide storage facility shall submit to the secretary a diagram, plans, and specifications of the facility. The plans and specifications shall include the existing or proposed facility layout, mechanical and electrical diagrams, construction materials, and the type of equipment that is located in the facility or that is to be fixed or installed in the facility. The diagram shall be drawn to scale and shall be legible without magnification.

(b) The diagram, plans, and specifications of the bulk pesticide storage facility shall be submitted in a form prescribed by the secretary and, at a minimum, shall contain the following information:

(1) The location of the facility relative to the flood plain;

(2) the location of the facility relative to any surface water within 1,320 feet of the facility and the distance between the facility and the surface water;

(3) the distance from both the facility and the area within 100 feet of the facility to groundwater, and the location of the groundwater relative to the facility;

(4) the location of any plumbing and access to private and public water supplies and the distance from the plumbing and access to the private and public water supplies;

(5) the drainage pattern of the facility;

(6) certification that the facility is not located on any abandoned or active oil, gas, or water well;

(7) certification that the facility is not located on a utility easement;

(8) the size and location of the proposed walls and flooring to be located within the facility;

(9) the location and size of each bulk pesticide storage container;

(10) the location and size of each loading and mixing pad;

(11) the location of each appurtenance used in the storage or transfer of bulk pesticide within the facility;

(12) the location of electrical equipment, wiring, and static grounding wires;

(13) the location and size of dry pesticide storage; and

(14) any other information required by the secretary.

(c) Whenever an existing storage facility is remodeled significantly or an existing structure is converted to use as a bulk pesticide storage facility, the diagrams, plans, and specifications for the remodeling or conversion of a building to a facility shall be submitted by the owner or operator of the facility to the secretary for review before the remodeling or conversion begins. The diagrams, plans, and specifications shall contain all the information required in subsection (b) of

this regulation.

(d) In no event shall construction, remodeling, or conversion of an existing or proposed facility commence unless the applicant receives notice that the secretary requires no additional information.

(e) The construction, remodeling, conversion, and maintenance of a facility shall conform with the plans identified in the notice and required by K.A.R. 4-13-25a through K.A.R. 4-13-25l. (Effective December 27, 2002.)

K.A.R. 4-13-25i. Compliance dates. (a) Each owner or operator of a facility shall comply with the following:

(1) Within nine months after the effective date of this regulation, the owner or operator of a facility in existence or under construction on the effective date of this regulation who contends that the facility is in compliance with K.A.R. 4-13-25 through K.A.R. 4-13-25l shall certify on a form prescribed by the secretary that the facility meets or exceeds all the requirements of these regulations and is or will be constructed in accordance with the diagrams, plans, and specifications for the facility. A true and correct copy of the diagrams, plans, and specifications for the facility shall be attached to the certification. Owners or operators of facilities covered by this paragraph shall include owners or operators of a facility that meet either of the following conditions:

(A) Do not possess written notice from the secretary that no further information is required regarding the facility information submitted to the secretary, including diagrams, plans, and specifications; or

(B) have received written notice from the secretary that no further information is required, but the information submitted to the secretary does not accurately reflect the facility.

(2) The owner or operator of a facility in existence or under construction on the effective date of this regulation who has received written notice from the secretary that no further information is required and whose diagrams, plans, and specifications submitted to the secretary accurately reflect the physical condition of the facility shall submit to the secretary only the form prescribed by the secretary certifying that the facility meets or exceeds all the requirements of these regulations.

(3) Each owner or operator of a facility that is in existence or under construction on the effective date of this regulation who is required to alter the facility to comply with K.A.R. 4-13-25 through K.A.R. 4-13-25l shall submit the diagrams, plans, and specifications for the facility within 12 months after the effective date of this regulation. Construction shall not commence until the owner or operator receives written notice from the secretary that no additional information is required. Within two years after the plan is approved by the secretary, the owner or operator of a facility that is in existence or under construction on the effective date of this regulation but is required to be altered to comply with K.A.R. 4-13-25 through K.A.R. 4-13-25l shall certify on a form prescribed by the secretary that the owner or operator has completed the required alterations in accordance with the diagrams, plans, and specifications that were submitted to the secretary.

(4) Each owner or operator of a facility in existence or under construction on the effective date of this regulation who chooses to alter its facility after meeting the certification requirements specified in subsections (a) and (b) of this regulation shall submit the diagrams, plans, and specifications to the secretary before beginning construction of the alterations. Construction shall not commence until the owner or operator receives written notice from the secretary that no additional information is required. Within two years after the date of the secretary's written notice, the owner or operator of a facility who alters the facility under this paragraph shall certify on a form required by the secretary that the facility meets or exceeds all the requirements of K.A.R. 4-13-25 through K.A.R. 4-13-25l and is constructed in accordance with the diagrams, plans, and specifications submitted to the secretary.

(5) Each owner or operator of a facility not in existence or under construction on the effective date of this regulation shall submit the diagrams, plans, and specifications to the secretary before commencement of construction. Construction shall not commence until the owner or operator receives written notice from the secretary that no further information is required. The owner or operator of a facility under this paragraph shall complete construction within two years after the secretary's written notice that no additional information is required. Upon completion of construction, the owner or operator of a facility under this paragraph shall certify on a form prescribed by the secretary that the facility meets or exceeds all the requirements of K.A.R. 4-13-25 through K.A.R. 4-13-25l and is constructed in accordance with the diagrams, plans, and specifications submitted to the secretary. Construction under this paragraph shall include conversion of any operation to a pesticide storage facility.

(b) Each owner or operator of a facility shall submit the diagrams, plans, and specifications required by paragraphs (a)(3) through (a)(5) in this regulation at least 30 days before the date the owner or operator proposes that the construction will commence. The owner or operator shall identify clearly on the diagrams, plans, and specifications the date on which construction is proposed to commence.

(c) Additional time to comply with any deadline in this regulation may be granted by the secretary upon receipt of a written request and upon a showing of good cause for the additional time requested. This request shall state the reason for the additional time requested and the amount of additional time needed. (Effective December 27, 2002.)

K.A.R. 4-13-25j. Bulk pesticide storage facility inspection and maintenance requirements.

(a) Each owner or operator shall inspect the facility at least once in every six-month period

following the effective date of this regulation. The inspection shall include detection of the following defects:

- (1) Corrosion;
- (2) leaks;
- (3) cracks;
- (4) spills;
- (5) gaps;
- (6) tears;
- (7) unsealed joints;
- (8) cross-contamination of pesticides;
- (9) structural defects;
- (10) equipment defects; and
- (11) any other defect in the facility or potential violation of K.A.R. 4-13-25 through K.A.R. 4-13-25l.

The owner or operator shall promptly correct any defect.

(b) On the day any defect is first discovered, the owner or operator shall record the following:

- (1) Any inspection or repair of the discovered defect at the facility;
- (2) any release of a pesticide within the facility in excess of 55 gallons or a combination

of releases in a 24-hour period totaling or exceeding 55 gallons;

- (3) any reportable event; and
- (4) the name of the person making the record and the date the record was made.

(c) Each owner or operator shall retain all inspection and maintenance records at the facility and shall make the records available to the secretary on request. The owner or operator shall record each inspection according to subsection (a) above on a form prescribed by the secretary. (Effective December 27, 2002)

K.A.R. 4-13-25k. Site closure and discontinuation of operation. (a) The owner or operator shall notify the Kansas department of agriculture within 30 calendar days following the permanent cessation of operations of a bulk pesticide storage facility.

(b) Whenever a bulk pesticide storage facility permanently ceases operations, the owner or operator shall provide the secretary with written verification of both of the following, on a form prescribed by the secretary:

(1) All pesticides, solutions containing a pesticide, wash waters, and other materials that may contain pesticides have been removed from the facility and have been used or disposed of according to the pesticide's label or labeling, and according to all federal, state, and local requirements.

(2) All bulk pesticide containers, appurtenances, mixing and loading pads, and sumps have been thoroughly cleaned according to each pesticide manufacturer's requirements, instructions, directions, or recommendations or, if none exist, according to standard industry practice. (Effective December 27, 2002)

K.A.R. 4-13-25l. Penalty for noncompliance with pesticide containment. The license, certification, or registration of any pesticide business licensee, governmental agency registrant, pesticide dealer, or certified private applicator who is found to have violated a pesticide containment requirement in K.A.R. 4-13-25a through 4-13-25k shall be subject to suspension, revocation, nonrenewal, or cancellation. The procedure required for enforcement of K.A.R. 4-13-25 through K.A.R. 4-13-25k shall comply with the requirements of the Kansas administrative procedures act, K.S.A. 77-501 et seq., and amendments thereto. (Effective December 27, 2002.)

4-13-26. Preconstruction application of pesticide for termite control. In addition to the requirements of the label, each preconstruction application of pesticide for the control of termites shall consist of establishing both horizontal and vertical chemical barriers, as specified in this regulation.

(a) Horizontal chemical barriers shall be established in areas intended to be covered, including the soil beneath slab floors and porches, footing trenches for monolithic slabs, and the soil beneath stairs.

(b) Vertical chemical barriers shall be established in the soil around the base of foundations, plumbing fixtures, foundation walls, support piers, and voids in masonry, and any other critical areas where structural components extend below grade. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2471; effective March 26, 1990; amended July 18, 2003.)

4-13-27. Certificate of liability insurance. Each applicant for a pesticide business license shall provide the secretary with a certificate of liability insurance which shall contain the following information:

- (a) the name of the insured pesticide business licensee;
- (b) the name of the insurance company which issued the policy;
- (c) the effective date of the policy;
- (d) the expiration date of the policy; and
- (e) the policy number.

If a surety bond is furnished in lieu of a certificate of liability insurance, the bond shall be executed on a form provided by the secretary and shall comply with the provisions of K.A.R. 4-13-8.

4-13-28. Target pests which are not specified on the pesticide's label or labeling. Any pesticide may be applied for the purpose of controlling a pest which is not specified on the pesticide's label or labeling provided that: (a)(1) the pesticide's label or labeling authorizes application of the pesticide to the same crop, animal or site requiring application;

(2) the pest to be controlled belongs to the same general group of pests intended to be controlled by the pesticide to be applied;

(3) the pesticide's label or labeling does not specifically prohibit its application to the target pest to be controlled, or to the crop, animal or site to which the pesticide is to be applied; and

(4) the application of the pesticide to the target pest, or to the crop, animal or site, has not been prohibited by rules and regulations promulgated by the secretary.

(b) Each pesticide which is applied in accordance with the provisions of subsection (a) of this regulation shall be deemed not to cause any unreasonable adverse effects on the environment, nor to endanger the health, safety or welfare of the citizens of this state.

4-13-29. General use pesticides for household application or use for the purpose of pesticide dealer registrations. General use pesticide products sold for household application or use shall include only those ready-to-use general use pesticide products which:

(a) are to be applied undiluted, in accordance with use instructions shown on the pesticide's label; and

(b) are to be applied by homeowners or occupants to control pests in and around the family dwelling and associated structures.

4-13-30. Dealer recordkeeping requirements. (a) Each pesticide dealer shall maintain records regarding sales of restricted use pesticide products. These records shall be made available during reasonable business hours to the secretary or the secretary's authorized representative for purposes of inspection and copying. Each record shall be kept for a minimum of two years after the date of the sale.

(b) The records shall contain the following information:

(1) The name and address of the residence or principal place of business of each person to whom the restricted use pesticide product has been sold;

(2) the name and address of the residence or principal place of business of the individual to whom the restricted use pesticide product has been delivered or made available if different from the purchaser;

(3) the certification number of applicator's certificate;

(4) the name of the state issuing the certificate;

(5) the expiration date of the certificate;

(6) if the applicator is a certified commercial applicator of pesticides, the categories and subcategories, if applicable, in which the applicator is certified;

(7) the registered name of the restricted use pesticide product, its EPA registration number and the state special local need registration number, if any;

(8) the quantity of the restricted use pesticide product sold; and

(9) the date of the transaction.

(c) If the pesticide dealer makes a restricted use pesticide product available to an uncertified person for use by a certified applicator, the following additional records shall be kept:

(1) The name and address of the residence or principal place of business of the uncertified person to whom the restricted use pesticide product has been made available; and

(2) the name and address of the residence or principal place of business of the certified applicator who will use the restricted use pesticide product.

(d) Each pesticide dealer shall submit an annual report for each restricted use pesticide product sold. The report shall include:

(1) the registered name of the restricted use pesticide product, its EPA registration number and the state special local need registration number, if any; and

(2) the quantity sold of the restricted use pesticide product.

4-13-31. Certificates of registration. Each pesticide dealer shall display that dealer's current certificate of registration in a prominent location which can be seen by the general public.

4-13-32. Report of address change by pesticide dealer. Each pesticide dealer shall notify the secretary of any change in its business address or business name by the tenth day of the month following the month in which the change occurred.

K.A.R. 4-13-33. Pest control technician registration fee and renewal fees. The application fee for a pest control technician registration or for the renewal of a pest control technician registration shall be \$40.00. Any fee paid by the applicant pursuant to K.A.R. 4-13-9 shall be applied toward payment of the fee required by this regulation. This regulation shall apply to all pest control technician registrations, or renewals of these registrations, that will be effective on and after July 1, 2002 and through June 30, 2005, regardless of when the application is received by the agency. The \$40.00 pest control technician registration fee shall revert to \$25.00 on and after July 1, 2005, unless the termination date is modified by statute. (Amended Oct. 25, 2002.)

4-13-34. Verification of training of registered pest control technicians. (a) Each pesticide business licensee who applies pesticides or causes pesticides to be applied for the control of wood destroying pests, structural pests, ornamental pests, turf pests, interior landscape pests, or any combination of these pests shall maintain records to verify that each registered pest control technician employed by such business licensee has received the required training in each appropriate category of pest control. These training records shall contain the following information for each training session:

- (a) The typed or printed name of the trainee;
 - (b) the subject matter covered;
 - (c) the type of training, classroom or on-the-job;
 - (d) the date on which the training occurred;
 - (e) the duration of the training in hours;
 - (f) the signature of the trainee; and
 - (g) the signature of the authorized officer or representative of the pesticide business licensee who administered the training.
- (b) This regulation shall become in force and effect from and after January 1, 1989.

4-13-35. Registered pest control technician identification cards. (a) The secretary shall issue an identification card to each registered pest control technician upon satisfactory completion of the requirements for registration. This identification card shall show the registered technician's typed name and signature, the category or subcategory for which the registration has been issued, the name of the business licensee employing the registered technician, the date on which the identification card was issued, and the expiration date of the registration. The registered pest control technician shall have this identification card in the technician's possession when applying any pesticide for the control of wood destroying pests, structural pests, ornamental pests, turf pests, interior landscape pests, or any combination of these pests or when supervising the application of any general use pesticide. The technician shall produce this identification card when requested to do so by any customer, law enforcement official, the secretary or any authorized representative of the secretary. This regulation does not authorize any registered pest control technician to supervise the use of, or to apply, any restricted use pesticide unless the application is supervised by a commercial applicator who is certified to apply restricted use pesticides for the control of pests in the category or subcategory for which the pesticide application is made.

- (b) This regulation shall be in force and effect from and after January 1, 1989.

4-13-36. Training of registered pest control technicians in wood destroying pest control and structural pest control.

(a) All applicants for pest control technician registration in wood destroying pest control or structural pest control shall have completed a minimum of 40 hours of verifiable training, 30 hours of which must consist of supervised application of pesticides in and around structures, and 10 hours of which must be classroom instruction.

- (b) Classroom instruction shall include the following:
- (1) The proper use and maintenance of equipment, including calibration, "crack and crevice" and "spot" application, and other application techniques;
 - (2) The potential dangers involved in applying the pesticides, including:
 - (A) hazards to the applicator resulting from mixing, loading and applying pesticides, poisoning prevention, symptoms and first aid for pesticide poisoning;
 - (B) hazards to the occupants of the structures where pesticides are applied with particular emphasis on children, the aged and infirm;
 - (C) procedures for preventing pesticide contamination of food, groundwater, wells and cisterns, and the air within the structure being treated;
 - (D) label review and basic information about each pesticide used for control of wood destroying pests or structural pests, including common names of the pesticides, where and how each pesticide may be applied, and the kinds of pests controlled;
 - (E) basic information about prevention and cleanup of spills; and
 - (F) the use of non-chemical means to control wood destroying and structural pests.
 - (3) calculating the concentration of pesticides to be used and the quantities of diluted pesticide necessary to complete a particular treatment;
 - (4) identification of common pests to be controlled and damages caused by such pests as subterranean termites,

carpenter ants, wood decaying fungi, German, American and oriental cockroaches, silverfish, fleas, ticks, spiders, pantry pests, house mice, field mice, and Norway rats, the basic characteristics and habits of these pests and conditions that favor structural infestation by these pests;

(5) protective clothing and equipment, including the use and maintenance of rubber gloves and respirators;

(6) general precautions to be followed in the storage and disposal of pesticide containers and rinsate, as well as the cleaning and decontamination of equipment;

(7) applicable state and federal pesticide laws and regulations germane to the work of a technician, including but not limited to following label directions, direct supervision, information required on statements of services, and termite control application procedures; and

(8) basic information regarding elements of construction likely to be encountered including, heating and plumbing systems and such terms as footing, foundation wall, wall voids, sill plate, joists, subfloor, and slab-on-grade.

4-13-37. Renewal of pest control technician registration. A pest control technician's registration may be renewed for a succeeding one-year period by paying the fees prescribed by law, completing the renewal application form provided by the secretary, and completing successfully six hours of classroom training in approved subjects during the effective period of the technician's registration. This training may be conducted by the pesticide business licensee, or in the alternative, the pest control technician may attend a training course approved by the secretary. The pesticide business licensee shall verify and maintain records to support the verification that each pest control technician it employs has satisfactorily completed the training required for renewal.

4-13-38. Training of registered pest control technicians in ornamental pest control, turf pest control and interior landscape pest control. (a) All applicants for pest control technician registration in ornamental pest control, turf pest control or interior landscape pest control shall have completed a minimum of 40 hours of verifiable training, 30 hours of which must consist of supervised application of pesticides for the control of ornamental pests, turf pests or interior landscape pests as appropriate, and 10 hours of which must be classroom instruction.

(b) Classroom instruction shall include the following:

(1) The proper use and maintenance of equipment, including calibration.

(2) the hazards that may be involved in applying the pesticides, including:

(A) The effect of drift of the pesticides on adjacent and nearby property and on nontarget organisms, and methods for preventing drift;

(B) the proper weather conditions for the application of pesticides and the precautions to be taken;

(C) procedures for preventing pesticide contamination of groundwater, wells and cisterns, surface water, soil, or the air within a structure;

(D) the effect of the pesticides on humans, plants or animals in the area, including the possibility of damage to plants or animals or the possibility of undesirable or illegal residues resulting on them;

(E) the effect of the application of pesticides on wildlife in the area, including aquatic life;

(F) the possibility of contamination of water or injury to persons, pets or desirable vegetation;

(G) hazards to the applicator resulting from mixing, loading and applying pesticides;

(H) poisoning prevention, symptoms and first aid for pesticide poisoning;

(I) label review and basic information about each pesticide used, including common names of the pesticides, where and how each pesticide may be applied, and the kinds of pests controlled;

(J) basic information about prevention and cleanup of spills; and

(K) basic information about beneficial insects and the use of non-chemical means to control ornamental pests, turf pests and interior landscape pests;

(3) calculating the concentration of pesticides to be used and the quantities of diluted pesticide necessary to complete a particular treatment.

(4) identification of common pests to be controlled and damages caused by such pests, as listed below, and the basic characteristics and habits of these pests.

(A) For registered pest control technicians in the field of ornamental pest control, common pests shall include but not be limited to: bagworms, cankerworms, elm leaf beetles, aphids, spider mites, galls and gall-producing insects and diseases, flatheaded and roundheaded wood boring beetles, scale insects, cedar-apple rust, anthracnose and powdery mildew.

(B) For registered pest control technicians in the field of turf pest control, common pests shall include but not be limited to: sod webworms, chinch bugs, white grubs, sowbugs, broadleaf weeds such as dandelion, chickweed, and henbit, grasses such as crabgrass, foxtail and annual bluegrass, *Helminthosporium* leaf spot, *Pythium* and *Fusarium* blights, moles and gophers.

(C) For registered pest control technicians in the field of interior landscape control, common pests shall include but not be limited to: whiteflies, mealybugs, scale insects, spider mites, aphids, fungus gnats, snails and slugs, ants, sowbugs, thrips, damping-off, botrytis blight and powdery mildew;

(5) protective clothing and equipment, including the use and maintenance of rubber gloves and boots, rainsuits and

respirators.

(6) general precautions to be followed in the storage and disposal of pesticide containers and rinsate, as well as the cleaning and decontamination of equipment.

(7) applicable state and federal pesticide laws and regulations germane to the work of a technician, including following label directions, direct supervision and information required on statements of services.

4-13-40. Types of hearings. (a) A conference adjudicative hearing may be used for the following types of action:

(1) Suspension or revocation of a pesticide business license for the licensee's failure to maintain acceptable insurance or bond continuously during the licensing period as required by K.S.A. 2-2448.

(2) Suspension or revocation of the pesticide business license or governmental registration for the licensee's failure to employ a certified commercial applicator for each category of business operations in which a license has been issued.

(3) Suspension of a pesticide business license, governmental registration or applicator's certificate, whether commercial or private, which has been issued when fees were paid by an insufficient fund check.

(4) Suspension or revocation of a pesticide business license, governmental agency registration or any certificate for multiple or repeated violations of the Kansas pesticide law or of the rules and regulations promulgated thereunder when no material issue of fact is involved.

(5) Such other instances as designated in section 33 of the Kansas administrative procedures act.

Nothing in this subsection shall prohibit the conversion of another type of hearing to a conference adjudicative hearing. Conversion procedures shall conform with section six of the Kansas administrative procedures act.

(b) The summary adjudicative hearing may be used for the following types of action:

(1) A reprimand, warning or disciplinary report pertaining to a violation of the Kansas pesticide law or rule or regulation promulgated thereunder.

(2) Any matter which may be resolved solely on the basis of inspections, examinations or tests made by the agency or its personnel.

All other hearings, except those which are emergency adjudicative hearings or which have been initiated as or converted to conference adjudicative hearings or summary adjudicative hearings shall be formal adjudicative hearings as defined in the Kansas administrative procedures act.

(c) This regulation shall be in effect from and after July 1, 1985.

4-13-41. Summary adjudicative hearing procedure. The secretary or, in the secretary's absence, the assistant secretary shall appoint a presiding officer to conduct each summary adjudicative hearing. The hearing procedures shall conform to the provisions of K.S.A. 77-537 through K.S.A. 77-541 inclusive as amended and supplemented.

4-13-42. Conference adjudicative procedure. The secretary or, in the secretary's absence, either the assistant secretary or the secretary's designee shall appoint a presiding officer to conduct each conference adjudicative hearing. The hearing procedures shall conform to the provisions of both K.S.A. 77-534 and K.S.A. 77-535 as amended and supplemented.

4-13-60. Civil penalty; complaint. (a) Each complaint for the assessment of a civil penalty shall include:

(1) A statement reciting each subsection of the act authorizing the assessment of civil penalty;

(2) a specific reference to each provision of the act or implementing regulation which respondent is alleged to have violated;

(3) a concise statement of the factual basis for each violation alleged;

(4) the amount of the civil penalty which is proposed to be assessed; and

(5) the notice of respondent's right to request a hearing on any material fact contained in the complaint or on the appropriateness of the amount of the proposed civil penalty. This notice may be incorporated within the complaint or set forth in a separate document.

(b) Each respondent shall be served a notice of a pre-hearing conference in accordance with the Kansas administrative procedures act, K.S.A. 77-501 et seq.

4-13-61. Answers to the complaint. (a) If a respondent contests any material fact upon which the complaint is based, contends that the amount of the civil penalty proposed in the complaint is inappropriate or contends that the respondent is entitled to judgment as a matter of law, the respondent may file a written answer to the complaint. If an answer is filed, the answer shall be filed with the designated hearing officer within 20 days after service of the complaint.

(b) If an answer is filed, the respondent's answer shall be in writing. (1) The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint to which the respondent has any knowledge.

(2) Where the respondent has no knowledge of a particular factual allegation and so states, the allegation shall be deemed denied.

(3) The answer shall also state any circumstances or arguments which are alleged to constitute grounds of defense, any facts which the respondent disputes and intends to place at issue and whether a hearing is requested.

4-13-62. Amount of proposed civil penalty. (a) A separate civil penalty shall be assessed for each violation of the pesticide law which results from each independent act or failure to act by any pesticide business licensee or agent or employee thereof. In determining whether a given violation is independent of and substantially distinguishable from any other violation for the purpose of assessing separate civil penalties, consideration shall be given to whether each violation requires an element of proof not required by another violation. Where several violations require the same elements of proof and are not distinguishable, assessment of separate civil penalties shall be within the discretion of the secretary or the secretary's authorized representative.

(b) The amount proposed for each civil penalty shall be within the ranges listed below.

(1) For each violation of K.S.A. 2-2453(a) or (b), the proposed civil penalty shall be not less than \$100 nor more than \$5,000.

(2) For each violation of K.S.A. 2-2454(b) or 2-2454(m), the proposed civil penalty shall be not less than \$100 nor more than \$5,000.

(3) For each violation of K.S.A. 2-2454 not covered in subsection (2) above, the proposed civil penalty shall be not less than \$100 nor more than \$1,000.

(4) For each violation of K.S.A. 2-2453(c) not already covered in subsections (1), (2) or (3) above, the proposed civil penalty shall be not less than \$100 nor more than \$1,000.

(c) For each subsequent occurrence of a violation for which a civil penalty has been assessed within a three-year period, the civil penalty assessed for the subsequent violation shall be the maximum amount for the category listed.

4-13-63. Criteria to determine dollar amount of proposed civil penalty.

In determining the amount of any proposed civil penalty, the gravity of the violation shall be considered by the secretary or the secretary's designee. Factors to be considered shall include:

(a) The potential of the act to injure humans, pets, domestic animals, wildlife or the environment;
(b) the severity of potential injuries;
(c) the extent to which injury actually occurred;
(d) the respondent's history of compliance with state and federal pesticide laws and regulations promulgated thereunder;

(e) any action taken by respondent to remedy the specific violation or to mitigate any adverse health effects or environmental effects which were the result of the violation; and

(f) whether or not the violation involved any misrepresentation or fraud.

4-13-64. Informal settlement. (a) The respondent may request a settlement conference. The request may be contained either in respondent's answer to the complaint, if an answer is filed, or presented at the pre-hearing conference.

(b) If a settlement is reached, the parties shall reduce the settlement to writing and present the proposed written consent agreement to the secretary or the secretary's designee. The consent agreement shall state that, for the purpose of the proceeding, respondent:

(1) Admits the jurisdictional allegations of the complaint;

(2) admits the facts stipulated in the consent agreement;

(3) neither admits nor denies specific factual allegations contained in the complaint; and

(4) consents to the assessment of a stated civil penalty. The consent agreement shall include any and all terms of the agreement and shall be signed by all parties or their counsel or representatives of record.

4-13-65. Adjusting the amount of the proposed civil penalty. (a) Each respondent shall present all evidence on the issue of adjustment of the proposed civil penalty at the settlement conference. Such evidence may include mitigating factors or new evidence not previously known to the agency at the time the complaint was issued.

(b) Upon presentation by the respondent of new evidence establishing facts and circumstances that were unknown to the secretary at the time the complaint was issued and which relate to the gravity of the violation, a new civil penalty may be proposed.

(1) When these additional facts establish that respondent did not commit the violations charged, the complaint shall be dismissed.

(2) When the new evidence reveals additional charges should have been filed, a new complaint containing appropriate additional civil penalties may be filed.

(c) The burden shall be on the respondent to present evidence of any mitigating factors to support any requested reduction in the amount of proposed civil penalty. The amount of the civil penalty may be reduced if the reduction serves the public interest.

(d) The amount of a civil penalty shall not be reduced to less than \$100 per offense.

(1) Whether or not a proposed civil penalty is reduced lies within the sole discretion of the secretary or the secretary's designee.

(2) Reductions shall not occur unless evidence of mitigating factors has been presented by respondent.

